TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914 1915

No. [redacted] 9

CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

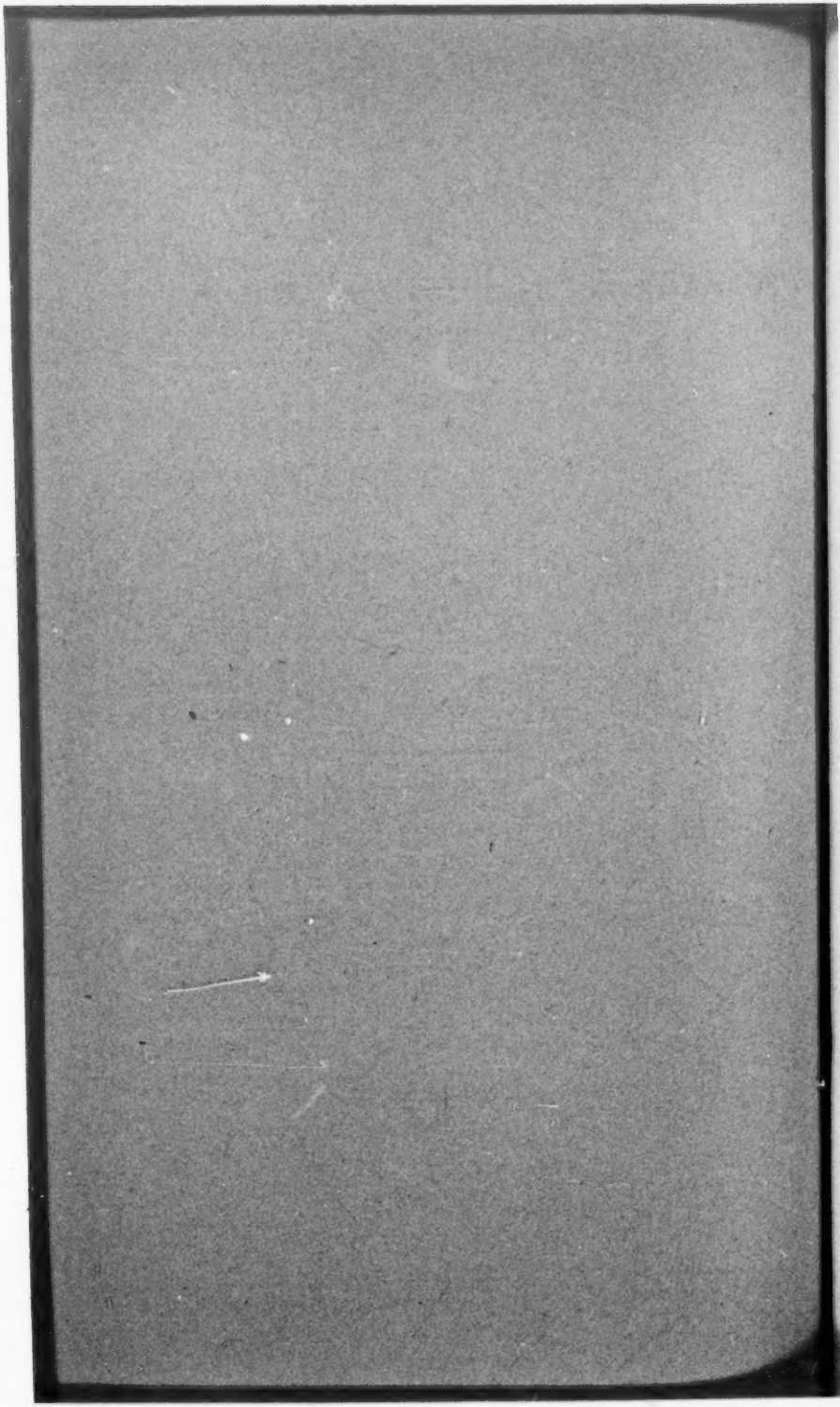
vs.

WILLIAM J. MURRAY, CHAIRMAN, JOHN McSWEEN, ET AL., CONSTITUTING THE STATE DISPENSARY COMMISSION, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED DECEMBER 7, 1912.

(23,448)



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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 5, 1914.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910.

In the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY Patton, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Order to Show Cause.

Upon reading the annexed verified complaint and affidavits submitted by plaintiff,

It is ordered, That the defendants, and each of them, do show cause, if any they can, before the Supreme Court of the State of South Carolina, in its court room in the Capitol building, in the City of Columbia, County of Richland, and State of South Carolina, at 10 o'clock in the forenoon, on the 25th day of April,

2 A. D. 1910, or as soon thereafter as counsel can be heard, why the perpetual injunction and other and further relief prayed for in the annexed complaint should not be granted.

And it is further ordered, That a copy of this order and of the attached verified complaint and affidavits be served with due dispatch upon each of the defendants.

(Signed) C. A. WODDS,
Associate Justice.

Marion, S. C., March 5th, 1910.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY Patton, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Complaint.

The plaintiff, complaining of the above named defendants, alleges:

1. That the plaintiff is, and was at the times hereinafter stated, a

corporation duly chartered and organized under the laws of the State of South Carolina, having its principal place of business at Columbia in said State.

3 2. That the defendants, W. J. Murray, as Chairman, and John McSween, A. N. Wood, Avery Patton and J. S. Brice, constitute the State Dispensary Commission, having been duly appointed by the Governor of the State of South Carolina under an Act entitled "An Act to amend an Act entitled 'An Act to provide for the disposition of all property connected with the State Dispensary, and to wind up its affairs,' so as to provide compensation for members of the said Commission for the year 1908, and to provide for the sale of the real estate heretofore used in conducting the Dispensary, and to further provide for winding up the affairs of the State Dispensary," approved the 24th day of February, 1908; and the defendant J. Fraser Lyon is the duly elected and qualified Attorney-General of the State of South Carolina and, as such, is acting as legal adviser of the said State Dispensary Commission; and the defendants W. F. Stevenson, B. L. Abney and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree and Chas. G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, have been employed as special counsel by the defendant State Dispensary Commission.

3. That the plaintiff for a number of years has been, and still is, the owner of real estate situate in the City of Columbia, in the County of Richland, State aforesaid, of considerable value, and has been, and still is, engaged in the business of manufacturing and selling glass bottles, demi-johns, etc., suitable for the use of the State and County Dispensaries.

4. That for several years prior to the year 1906, this plaintiff sold and delivered under regular contracts to the State Dispensary glass bottles, demi-johns, etc.; and during the year 1906 and in the early part of the year 1907, under contracts made with the Board of Directors of the State Dispensary, sold and delivered to it bottles, demi-johns, etc., of the value of ninety-nine thousand one hundred

4 and eight dollars ($99,108.00), according to the special bids then and there entered into, all previous contracts of the said State Dispensary having been cancelled by a Joint Resolution of the General Assembly of the State of South Carolina at its session of 1906, upon which there was a balance due to this plaintiff of twenty-three thousand and thirteen and 75/100 dollars ($23,013.75), which is still due and unpaid.

5. That the said State Dispensary Commission having been organized and proceeding under the Act approved the 24th day of February, 1908, this plaintiff filed with the said State Dispensary Commission a statement of its claim of twenty-three thousand and thirteen and 75/100 dollars ($23,013.75) and offered evidence to show the validity and justice of the same.

6. That thereafter, to wit, on the 17th day of November, 1909, the said State Dispensary Commission filed its finding or judgment upon the said claim, which, after reciting certain proceedings, proceeded as follows, to wit:

"The Commission finds that the total amount of sales, after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was $613,437. Of this amount the sum of $99,108.00 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated $514,329.90.

"The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did
5 lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was $51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to-wit: its claim for $23,013.75, which, being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of $28,419.24.

"Whereupon judgment is rendered in accordance with the foregoing findings.

"Signed this November 17th, 1909.

"W. J. MURRAY.—No.
"JOHN McSWEEN.—No.
"A. N. WOOD.
"AVERY PATTON.
"J. S. BRICE."

7. That this plaintiff submits that no question of the right of the State of South Carolina against said plaintiff on account of transactions prior to 1906, by offset, counter-claim or otherwise, was before the said State Dispensary Commission by any notice or other pleading of any character, and that the said Commission, being a Court whose jurisdiction was limited to the consideration of and passing upon claims made against the State of South Carolina on account of the State Dispensary, had no power to consider the supposed claim of the State of South Carolina against the claimant on account of transactions which had occurred prior to the year 1906; and this plaintiff, conceiving itself wronged by the unjust and unwarranted
6 finding of the said State Dispensary Commission and its action in finding and offsetting the said fifty-one thousand four hundred and thirty-two and 99/100 dollars ($51,432.99) against its just and valid claim of twenty-three thousand and thirteen and 75/100 dollars ($23,013.75) found by the said State Dispensary Commission to be due to the plaintiff, gave due notice of

appeal to the Supreme Court under the provisions of Sec. 11 of the Act above referred to, and is now prosecuting its proceedings for said appeal.

8. That this plaintiff since the organization of the County Dispensaries has been selling to certain of them bottles for their use, and on or about the 20th day of November, 1909, had orders for the prompt shipment of such bottles to the County Dispensary for the County of Richland, and to the County Dispensary for the County of Aiken, and others; and on or about said date, learning through the newspapers of the State of South Carolina that his Excellency, the Governor of the State, at the instance and request of the State Dispensary Commission, had issued orders to the Dispensary Auditor and to the County Dispensary directing them to withhold the amounts that might be due by the said County Dispensaries to certain persons and corporations, this plaintiff caused its attorneys, Messrs. John T. Seibels and Wm. H. Lyles, on its behalf to approach his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney-General of the State of South Carolina, and to state to them the condition of affairs with reference to such orders, and that plaintiff's said counsel were referred by the Governor and the Attorney-General to the Defendant W. F. Stevenson, who was said to have charge of the matter in question. And thereupon, on said 20th day of November, 1909, one of plaintiff's counsel, Mr. Wm. H. Lyles, called up the said Defendant W. F. Stevenson, then at Cheraw, in the State of South Carolina, over the long-distance telephone, and stated
7 to him, in substance, the conversations which had occurred between him and Mr. John T. Seibels on the one side, and the Governor and Attorney-General on the other, and was informed by the said Defendant W. F. Stevenson that no action would be taken to interfere with or hold up the amounts that might become due to the plaintiff on account of goods that might be sold or shipped to the said County Dispensaries on or after the said 20th day of November, 1909; and being requested by the said Wm. H. Lyles to give him such statement in writing, the said Defendant W. F. Stevenson, on the said 20th day of November, 1909, wrote to plaintiff's said attorney a letter, as follows, to-wit:

"Stevenson & Matheson,
"Attorney at Law.

"CHERAW, S. C., *Nov.* 20, '09.

"Mr. Wm. H. Lyles, Att'y, Columbia, S. C.

"MY DEAR SIR: Representing the interests concerned in collecting the back debts of the State Dispensary for overcharges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned, I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our

policy as to that, we will give you timely notice, and it will affect no shipments made in the meanwhile. The company being a resident corporation, we haven't the difficulty as to jurisdiction which
8 we have in other cases. I will confer with you as to the accounts due the company as soon as I have reached a determination as to them.

"Yours most truly,

"(Signed) W. F. STEVENSON.

"cc. to T. B. Felder, B. L. Abney and J. Fraser Lyon."

9. That in pursuance of the agreement and understanding so arrived at, and relying implicitly thereon, this plaintiff continued to sell to, and ship to, certain of the said County Dispensaries goods needed for their purposes without ever having received any notice or any intimation from the said defendants, or any one else, that the understanding and agreement so reached would be terminated or violated, until on the 26th day of February, 1910, there were due to this plaintiff the following sums from the following named County Dispensaries on account of goods so sold and shipped after the said 20th day of November, 1909, to-wit:

From the County Dispensary for the County of Richland	$4,963.13
From the County Dispensary for the County of Georgetown	660.68
From the County Dispensary for the County of Aiken	705.41
From the County Dispensary for the County of Beaufort	26.70
Aggregating the sum of	$6,355.92

when, to plaintiff's great astonishment, it was informed that the following notice, to-wit:

9 "STATE OF SOUTH CAROLINA,
"Richland County:

"THE STATE
vs.
"CAROLINA GLASS CO.

"Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass Co. of $29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina owing to overcharges made by the said defendant in selling goods to the late State Dispensary, and this notice is given in accordance with the terms of an Act of the Legislature passed in February, 1910, and duly approved by the Governor.

"(Signed) J. FRASER LYON,
Attorney-General.

"B. L. ABNEY,
"ANDERSON, FELDER, ROUNTREE & WILSON,
Of Counsel,"

had been filed in the office of the Clerk of the Court of Common Pleas and General Sessions for the County of Richland, and recorded in the Book of Notices of the Pendency of Actions, and that such notice, or one similar thereto, had been served upon the Chairman of the Board of County Dispensaries for the County of Richland, and this plaintiff infers that a similar notice or notices have been served upon the County Dispensaries of the Counties of Georgetown, Aiken and Beaufort; and this plaintiff alleges that the said action was wholly without the authority of law, the said defendants claiming to proceed under the provisions of Section 7 of an Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," approved the — day of February, 1910, which this plaintiff alleges could not be construed to apply to any action of the said State Dispensary Commission which had occurred prior to the passage of the said Act, and, if so construed, that the same would be wholly unconstitutional, null and void, as in conflict with Sections 5 and 8 of Article I of the Constitution of the State of South Carolina, and in violation of Section 10, Article I of the Constitution of the United States, and also of the Fourteenth Amendment to the Constitution of the United States.

10. That the said defendants, undertaking to proceed under Section 6 of the Act approved in February, 1910, aforesaid, as this plaintiff is informed and believes, has served upon the County Dispensary of Richland a notice requiring said County Dispensary to pay over to the State Dispensary Commission the sum of money so due by said County Dispensary of Richland to the plaintiff on account of the above mentioned illegal offset found to be due by the said State Dispensary Commission against this plaintiff, and this plaintiff supposes that such notice and demand has been, or will be, made upon each of the County Dispensaries above named; which action this plaintiff alleges was wholly without authority of law, as the provisions of said Section 6 of the Act above referred to were unconstitutional, null and void, as constituting an effort, unwarrantably and without authority, to confiscate the property of the plaintiff without due process of law, the provisions of said Section being in violation of Sections 5 and 8 of Article I of the Constitution of the State of South Carolina, and in violation of Section 10, Article I, of the Constitution of the United States, and also of the Fourteenth Amendment of the Constitution of the United States; and, furthermore, in violation of the express contracts and agreements entered into by this plaintiff with the defendants above named as above alleged; and this plaintiff alleges that such action constitutes a cloud upon plaintiff's title to its real estate situate in the said County of Richland; in the State aforesaid, and tends to hamper the plaintiff in the free and easy conduct of its business and to impair its credit and does irreparable injury to the plaintiff.

Wherefore, plaintiff demands judgment that the defendants, and each and every of them, be perpetually enjoined and restrained from allowing the notices aforesaid to be continued on file in the office of the Clerk of the Court of Common Pleas and General Sessions for the County of Richland, and from in any manner demanding or re-

ceiving the said sums, or any of them, alleged to be due by the several County Dispensaries above named to this plaintiff, or from in any manner interfering with the payment of any such sum or sums by the said County Dispensaries to this plaintiff, and for such other and further relief as to the Court may seem just, and for the costs of this action.

(Signed) JOHN T. SEIBELS,
(Signed) D. W. ROBINSON,
(Signed) LYLES & LYLES,
Attorneys for Plaintiff.

STATE OF SOUTH CAROLINA,
Richland County:

Personally appears John J. Seibels, who, being duly sworn, says: That he is President of the Carolina Glass Company, plaintiff in the foregoing complaint, and that the foregoing complaint is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true; that the matters and things alleged in paragraphs One, Two, Three, Four, Five, Six and Seven are alleged upon deponent's own knowledge; that paragraph Eight is true of deponent's own knowledge, except as to the allegations with reference to the interviews between plaintiff's counsel, John T. Seibels and Wm. H. Lyles, and his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney-General,
12 and the conversation with the Defendant W. F. Stevenson, as to which this deponent is informed and believes it to be true; that the allegations contained in paragraph Nine are made upon deponent's own knowledge, except the allegation that said action was wholly without the authority of law and in violation of the provisions of the State and Federal Constitutions, which allegation he is advised and believes to be true; that the allegations contained in paragraph Ten of the complaint are made upon advice received from plaintiff's counsel and deponent believes the same to be true; and that this verification is made by deponent because plaintiff is a corporation and deponent is its President.

(Signed) JOHN J. SEIBELS.

Sworn to before me this 4th day of March, 1910.

(Signed) W. G. BATEMAN. [L. S.]
Notary Public for S. C.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

13 STATE OF SOUTH CAROLINA,
Richland County:

Personally appears Wm. H. Lyles, who, being duly sworn, says: That on or about the 20th day of November, 1909, this deponent was one of the attorneys representing the Carolina Glass Company, plaintiff above named, in the matter of its claim against the State of South Carolina on account of the affairs of the State Dispensary; that deponent on said day, in company with Mr. John T. Seibels, at the instance and request of the President of said company, called upon his Excellency, the Governor, and upon Hon. J. Fraser Lyon, Attorney-General of the State of South Carolina, and stated to each of them, separately, that the said Carolina Glass Company was selling bottles to certain of the County Dispensaries; that said company had seen the notice in the morning papers about the orders issued by his Excellency, the Governor, to the County Dispensaries to withhold payment of claims to certain liquor houses, and that the company wished to know whether such orders were to be issued as to the Carolina Glass Company, as, if they were, it would of necessity have to refuse to fill further orders or make further shipments upon orders already received; that deponent and said John T. Seibels were informed by each of said parties that Mr. W. F. Stevenson was the special counsel who was charged with such matters and they were referred to him; that deponent then called up Mr. Stevenson over the long-distance telephone and informed him with reference to the said matters, telling him that he was informed and believed that some of the County Dispensaries were in immediate need of bottles, but that the Carolina Glass Company could not afford to ship them if its claim was to be in any way tied up; that Mr. Stevenson then stated to deponent, in substance, what he subsequently embodied in his letter dated November 20th, 1909, addressed to this deponent,
14 and which is now attached hereto; that deponent knows the signature thereof to be that of Mr. Stevenson, and upon receipt of this letter communicated its contents to Mr. Seibels, the President of the Carolina Glass Company, and advised him that it was perfectly safe to continue to make the deliveries of glass ordered by the several County Dispensaries, relying upon the promise made

in the 'phone conversation above referred to and restated in the said letter.

(Signed) WM. H. LYLES.

Sworn to before me this 4th day of March, 1910.

(Signed) W. T. AYCOCK, [L. S.]
Notary Public for S. C.

W. F. Stevenson, D. S. Matheson, Cheraw, S. C.
W. M. Stevenson, Bennettsville, S. C.

Stevenson & Matheson,
Attorneys at Law.

CHERAW, S. C., *Nov.* 20, '09.

Mr. Wm. H. Lyles, Att'y, Columbia, S. C.

MY DEAR SIR: Representing the interests concerned in collecting the back debts of the State Dispensary for over-charges, I will say that as far as shipments and deliveries to be made to the County Dispensaries are concerned, I will not ask that the money be held so as in any way to interfere with the money coming for any shipments made today or hereafter, until further notice. It being the intent of this letter to enable the Glass Co. to do business without interference from us in that way, from this time until such time as we may decide to change our policy. If we decide to change our policy as to that, we will give you timely notice, and it will affect no shipments made in the meanwhile. The company being a resident corporation, we haven't the difficulty as to jurisdiction which we have in other cases. I will confer with you as to the accounts now due the company as soon as I have reached a determination as to them.

Yours most truly,

(Signed) W. F. STEVENSON.

cc to T. B. Felder, B. L. Abney and J. Fraser Lyon.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, Chairman; JOHN McSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. FRASER LYON, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Personally appears John T. Seibels, who, being duly sworn, says: That he has read the affidavit of Wm. H. Lyles with reference to

conversations had between the said Wm. H. Lyles and deponent, on the one part, and his Excellency, the Governor, and Hon. J. Fraser Lyon, Attorney-General, on the other, on the 20th day of November, 1909, and knows that the statements therein made in reference thereto are true.

(Signed) JOHN T. SEIBELS.

Sworn to before me this 4th day of March, 1910.

(Signed) JOHN T. SEIBELS.
Notary Public for S. C.

16 STATE OF SOUTH CAROLINA:

In the Supreme Court.

CAROLINA GLASS COMPANY, Plaintiff,

vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Dan'l W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Summons for Relief.

(Complaint Served.)

To the Defendants Above Named:

You, and each of you, are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at 1215 Washington Street, Columbia, S. C., within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint.

Dated at Columbia, S. C., March 4, 1910.

(Signed) JOHN T. SEIBELS,
(Signed) D. W. ROBINSON,
(Signed) LYLES & LYLES,
Plaintiff's Attorneys.

17 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return to Rule to Show Cause.

W. J. Murray, chairman, John McSween, A. N. Wood, Avery Patton and J. S. Brice, constituting the State Dispensary Commission, upon whom has been served a rule to show cause before the Supreme Court of the State of South Carolina why the perpetual injunction and other and further relief prayed for in the complaint annexed to said rule should not be granted, for cause and in answer to the said complaint show:

18 I.

They admit the allegations contained in paragraph one of said complaint.

II.

They admit that, as alleged in paragraph two of said complaint, they constitute the State Dispensary Commission, but allege that the said W. J. Murray, John McSween and Avery Patton were duly appointed by the Governor of the State of South Carolina as members of said Commission under an Act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind up its Affairs," approved the 16th of February, 1907 (25 Stats., 835), along with C. K. Henderson and B. F. Arthur, but that, on or about the — day of March, 1908, the said Henderson and Arthur resigned as members of said State Dispensary Commission, and their offices remained vacant until the — day of June, 1909, when such vacancies in the said Commission were filled by the appointment of A. N. Wood and J. S. Brice, and which was subsequent to the approval of the amendatory Act mentioned in said paragraph. These respondents admit that, in and by the provisions of said Acts of the General Assembly, the Attorney-General of the State for the time being is the duly authorized legal adviser of this Commission, but they deny that their co-respondents, W. F. Stevenson and B. L. Abney, have been employed by them as special counsel, except as hereinafter mentioned and admitted as to the claim of the plaintiff, but they do admit and allege that their co-respondents mentioned in

said paragraph, composing the firm of Anderson, Felder, Rountree & Wilson, are under special contract with this Commission, and engaged and employed by it to represent and defend, with the approval of the Attorney-General, the interests of the State in certain claims pending before it, among which is the claim of the plaintiff,
19 and that such employment of said firm is specially authorized by the provisions of the Act creatng this Commission.

III.

They admit the allegations contained in paragraph three of said complaint.

IV.

As to the allegations contained in paragraphs four, five, six, seven, eight, nine and ten of said complaint these respondents admit the same, except as they may be in conflict and inconsistent with what is in this paragraph hereinafter stated, and the statements and findings contained in the judgment of this Commission herein set forth.

These respondents allege that the said State Dispensary Commission, composed as hereinabove stated, did organize on the 19th day of February, 1907, electing W. J. Murray, one of these respondents, as chairman, and B. F. Arthur as secretary (who, as stated above, served until the — day of March, 1908, when he resigned), and proceeded in accordance with the provisions of said Act, in the performance of its duties in the investigation, examination, hearing and determination of the claims presented to and before it, among which was the claim of the plaintiff, which on the 24th day of February, 1907, presented and filed its claim for the sum of $23,013.75, representing the same to be a balance due to it by the State of South Carolina on account of the sale and delivery of glass bottles, demijohns, etc., to the Board of Directors of the State Dispensary under awards made by the said Board in April, 1906, and subsequently thereto; that the said State Dispensary Commission, along with other claims, did regularly docket the same for hearing, and gave notice of its intention to proceed in conformity with the provisions of said Act in the disposition of said claim, and thereafter, on the 14th of February, 1908, the plaintiff did appear, by its duly
20 authorized officers and agents, before said Commission and proceed to introduce evidence in support of said claim; that on account of certain injunctions issued out of the Circuit Court of the United States for the District of South Carolina, the Commission was disabled by such proceeding and injunctions therein had from further hearing said case; that subsequently to the amendatory Act hereinbefore mentioned, and after the discharge of the said injunctions, this Commission, upon due and orderly notice in accordance with the provisions of said Acts and in conformity with its rules of conduct, regularly issued and made known to the plaintiff, did further hear evidence, make examinations and consider the same, on the 17th and 18th days of June, 1909, and divers other days, until this Commission, to wit, on the 17th day of November,

1909, did render and publish its findings and determination, judgment and decree, as follows:

"STATE OF SOUTH CAROLINA,
County of Richland:

In the Matter of the Claim of the Carolina Glass Company Against the State Dispensary of South Carolina.

The foregoing matter having come on for a hearing before this Commission, and evidence having been taken for and against the claim made by said Carolina Glass Company against the State Dispensary, and after hearing the argument of the counsel representing said claimant and counsel representing the interests of the State:

This Commission, exercising its powers under and by virtue of an Act of the General Assembly of the State of South Carolina, approved February, 1907, and Acts amendatory thereto, find as follows:

First. That the Carolina Glass Company was organized during the summer of 1902, in pursuance of an agreement which had been made between its promoters and certain members of the
21 Board of Directors of the South Carolina State Dispensary, whereby it was intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary should be made exclusively to the Carolina Glass Company; and that said Board of Directors, or some of them, entered into a conspiracy to defraud the State of South Carolina by preventing and defeating all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition.

Second. That in pursuance of this understanding and agreement the said Carolina Glass Company bid (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent. in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company, with whom the State Dispensary then had a contract, a large part of which was still unfilled; and notwithstanding this fact, and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices; that on or about December 3, 1902, the said Carolina Glass Company entered into an agreement with said Flaccus & Company under and by virtue of which the Carolina Glass Company purchased the contract of said Flaccus & Company and agreed to assume its full and complete performance, and also by the terms of said contract purchased from said Flaccus & Company the special moulds needed to manufacture the special bottles required under the rules of the Board of Directors of
22 the State Dispensary and other material used in connection with their manufacture and packing; that the Board of

Directors of the State Dispensary thereupon ratified the transfer of this contract from Flaccus & Company to the Carolina Glass Company, and there was at the time the same was purchased twenty-two cars of glass still to be delivered under its terms; that thereafter said Carolina Glass Company did not deliver any glass whatever to the State Dispensary as being manufactured under the terms of the Flaccus contract, nor at the price named in the Flaccus contract, but continued to manufacture glass under the award which had been made to it under its bid filed in September, 1902, until in March, 1903, another award was made by said Board of Directors of the South Carolina Dispensary to said Carolina Glass Company at substantially the same prices, although at that time its own contract made in September, 1902, had not been fully executed and no part of the remaining cars of glass called for under the Flaccus contract had been manufactured or delivered, and notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary for much lower prices and for goods of just as good quality, the said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company, which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business
23 with the State Dispensary, but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary.

Third. That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary, and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price (though for goods equal in quality), than those proposed at the same time by the Carolina Glass Company, and that some of said bids were suppressed by said Board of Directors with the consent of the Carolina Glass Company so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the said Carolina Glass Company and purchases made from it at the higher prices named in their bids.

Fourth. That after December 3, 1902, and until the early part of the year 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and

maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary; that after the year 1902, and during the remainder of the period above
24 named, said Carolina Glass Company, secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair market price for the goods sold. Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, whether the goods were then needed or not, and notwithstanding that said Glass Company had never filed said Flaccus contract until, at the time of the passage of the concurrent resolution by the two houses of the General Assembly of South Carolina in 1906, canceling the unfilled portions of existing contracts, there were outstanding contracts at exorbitant prices under which there remained to be filled orders for more than two hundred cars of glass bottles of the approximate value of more than $200,000; by which action on the part of the General Assembly, according to the testimony of one of the officers of said Glass Company, the State saved more than $50,000, when comparison is made with the prices paid for goods subsequently purchased.

Fifth. That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent. below the prices at which the same goods were being sold to the State of South Carolina; the agent of said Carolina Glass Company admitting in his evidence be-
25 fore the Commission that the purchase of the Flaccus contract was made for the purpose of getting rid of a competitor, and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina.

We, therefore, find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever; but the Commission further finds that it should determine the matter on equitable principles and fix the matter of liability on a "quantum meruit" basis, and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906, and 1907, at about ten per cent. above the fair and reasonable market price for said goods. The Commission finds that the total amount of sales, after making all proper corrections therein, made by the

Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was $613,437. Of this amount the sum of $99,108 was for goods sold during the year 1906 and the short period during 1907, during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding year 1906 aggregated $514,329.90.

26 The Commission finds that beginning early in the year 1906, as a result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina, and the resolutions adopted by the General Assembly relating especially to the contract with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907, during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906, the overcharges made in excess of the fair and reasonable market price for goods sold was $51,432.99, which would be and is hereby offset against the claim in favor of said Carolina Glass Company, to wit, its claim for $23,013.75, which being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of $28,419.24.

Whereupon, judgment is rendered in accordance with the foregoing findings.

Signed this November 17th, 1909.

W. J. MURRAY—No.
JOHN McSWEEN—No.
A. N. WOOD.
AVERY PATTON.
J. S. BRICE."

That thereafter the plaintiff gave notice of appeal from the determination and judgment of the State Dispensary Commission upon certain exceptions made thereto, and that the said appeal is now pending in this Court.

27 That said Commissioner, having ascertained and found that certain of the persons, firms and corporation- which had dealt with the State Dispensary were, by reason of such transactions and dealings, due to the State of South Carolina large sums of money, and that said persons, firms and corporations were claiming that, on account of certain sales of alcoholic liquors to County Dispensary Boards, the State of South Carolina was due by certain of these County Dispensary Boards therefor, and that the said County Dispensary Boards were in possession of funds arising from the conduct and operation of the Dispensaries in said counties applicable for the payment thereof, and were about to pay the same, and that such persons, firms and corporations had no other property or assets in this State to respond to the claims that were due to the State on account of the dealings had with the State Dispensary,

and that the same would be lost, unless the said Boards were prevented and enjoined from paying the same; this Commission did, on said November 17, 1909, pass the following resolution:

"Whereas, the firms of Thomas F. McNulty, John T. Barbee & Co., the Jack Cranston Company, S. Grabfelder & Co., Gallagher & Burton, Garrett & Co., J. W. Kelly & Co., William Lanahan & Son, Mallard Distilling Company, Meyer, Pitts & Co., Rosskam Gerstley & Co., Strauss, Pritz & Co., Bluthenthal and Bickart, Cook & Bernheimer Company and Friedman, Keiler & Co. owe the State large sums of money on overcharges made to the State Dispensary and the county dispensaries, owe them considerable sums of money and the Dispensary Auditor is being pressed to approve their accounts and allow them to be paid, as parties and corporations are non-residents of the State.

"Be it Resolved, That the said Auditor be requested and directed to hold up the payment of said sums for the benefit and behalf of the State, and not to allow any sums to be paid until the claims of the State be paid and settled."

28 But this Commission did not pass any resolution with reference to the said plaintiff, as will in said resolution appear, nor take any action with reference to the collection of what it had ascertained and found to be due the State by the said plaintiff on account of its dealings and transactions with the said State Dispensary; nor did this Commission make any direction or have any knowledge of the matters and things set forth in paragraph eight of said complaint, and that no such resolution, notice or action appears upon the minutes of its meetings, but these respondents have been informed and believe that at the time said Commission rendered its judgment in the case of the plaintiff on the 17th of November, 1909, the said plaintiff was due by the County Dispensary Boards as follows:

County Dispensary Board of Abbeville County	572.81
County Dispensary Board of Bamberg County	801.07
County Dispensary Board of Barnwell County	323.19
County Dispensary Board of Colleton County	470.38
County Dispensary Board of Fairfield County	1,562.89
County Dispensary Board of Georgetown County	44.51
County Dispensary Board of Kershaw County	926.92
County Dispensary Board of Laurens County	$1,039.84
County Dispensary Board of Orangeburg County	1,399.51
County Dispensary Board of Richland County	3,363.21
County Dispensary Board of Sumter County	386.12
Total	$10,890.45

which said amounts should, in equity and good conscience, and as a proper and legal application thereof, be returned and applied as a credit to the amount due the State, although not sufficient to have fully discharged what was ascertained and found to be due the State.

29 These respondents are further informed and believe that, notwithstanding the arrangement made and contained in the letter of their co-respondent, W. F. Stevenson, no interference would be made with money coming for any shipments made from the date of said letter until further notice, and that with regard to the amounts then due the company they (the attorneys) would confer together and reach a determination, the said plaintiff did, in violation thereof, withdraw, as appears from the allegations in paragraph nine of said complaint, $4,534.53 from the amount that was due at the time the plaintiff claims the agreement was made with Mr. Stevenson, it now appearing that there is only due by the said County Dispensary Boards to the plaintiff the sum of $6,355.92; and hence these respondents, upon information and belief, aver that, contrary to the allegations contained in said paragraphs, the plaintiff has violated the agreement contained in said letter itself, not their co-respondent, W. F. Stevenson.

V.

The General Assembly of the State of South Carolina at its last session passed an Act entitled "An Act to further provide for winding up the affairs of the State Dispensary," which was approved by the Governor on February 23, 1910; that in and by said Act the State Dispensary Commission was given certain authority and power therein set out, in addition to the powers theretofore conferred upon it; that this Commission, after having rendered its judgment on November 17, 1909, upon the claims and matters examined, investigated and heard, did, as stated above, take no action as a body or individually with regard to the enforcement of said finding or judgment except as hereinabove stated, but that, upon the approval of said Act it became their duty to convene and to carry into effect the provisions and requirements of said Act, and that they did

30 so convene on the 26th day of February, 1910, and proceed to the discharge of their duties under the last mentioned Act, as well — those heretofore mentioned and of force; that among the provisions of the Act of February 23, 1910 (a copy of which said Act is hereto attached and made a part of this return), the State Dispensary Commission was given authority to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations which had theretofore done business with the State Dispensary, and to pass all orders and judgments, and do any and all things necessary to carry out the purposes of said Act, and that all judgments rendered by them for any claim due the State should be a lien upon the property of the judgment debtor situated within this State, and the transcript of the said judgment should be filed in the office of the Clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated, and that in all cases pending before said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in any count- in the State, the said Commission should file in the office of the Clerk of the Court in each county where such real estate is situated, a notice of the

pendency of such cases, and the said notice so filed should be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State should have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate in the hands of any person or persons whomsoever shall be liable for the payment of such debt so found to be due the State.

That the State of South Carolina having a claim against the plaintiff as aforesaid, this Commission did direct and authorize
31 the institution before it of an examination of the said claim, and that notice to the plaintiff should be given pursuant to the provisions of said Act, and that, in accordance with the terms of said Act hereinbefore referred to, the Attorney-General, with associate counsel, the said firm of Anderson, Felder, Rountree & Wilson, being specially engaged as under its contract with the Commission it had full authority and right so to do, and the co-respondents, W. F. Stevenson and B. L. Abney, did file in the office of the Clerk of the Court of Common Pleas for Richland County the notice set out in paragraph nine of said complaint, which these respondents submit is in strict accord with section nine of the Act last hereinabove mentioned. These respondents are advised by their counsel that such notice has been filed in no other county than Richland, where they are informed the plaintiff owns certain real estate.

That at the same time this Commission, under the powers conferred by — and the directions therein contained, did, as alleged in paragraph ten of the complaint, cause to be served upon the County Dispensary Board of Richland County, a notice requiring said board to pay over to it the sum of money so due by the said County Dispensary Board of Richland County, which was due by it to the plaintiff; that the said plaintiff and its counsel had full knowledge or opportunity to know, and as respondents believe did know, of the said Act, while it was on its passage in the General Assembly, and these respondents aver that they knew the provisions of the same before its approval, and at the time said notice was filed in the office of the Clerk of the Court of Common Pleas for Richland County on the 26th of February, 1910, and that these respondents, as the State Dispensary Commission, were required to take such proceedings as they did take, and if they had not done so would have violated their duty and the law under which they were acting; that it was not the intention of the Commission or of its counsel to in any way violate
32 or affect the terms of the arrangement made by Mr. Stevenson, contained in his said letter, to stop or enjoin the payment by the County Dispensary Boards for the purchase of glass, &c., made subsequent to the 20th of November, 1909, but that it should affect and require the payment over to it of the amounts due by the said County Dispensary Boards to the plaintiff on account of purchases and sales made prior to the said 20th of November, 1909, and these respondents, as hereinabove stated, aver that they are not interfering with any such arrangement, but on the contrary the said

plaintiff has violated said arrangement and collected from the said County Dispensary Boards $4,534.53 more than it should have collected under said arrangement.

And these respondents further aver and submit to the Court that, if it be found upon inquiry under the orders of this Court, that the respondents have, in fact, violated the agreement, and that there was not, as these respondents are informed and believe, due to the plaintiff the said sum of $10,890.45, but a less sum, and that the notices and orders of this Commission, which it was obligated under the terms of said Act to make and give, have stopped or interfered with the payment of any amount whatsoever due to the plaintiff on account of purchases and sales made subsequent to November 20, 1909, and prior to the approval of said Act, they are desirous that the necessary and proper orders shall be passed by this Court, if the same can be done lawfully under the provisions of said Act, to the effect that the same may be adjusted in accordance with said agreement, and if it be found that the plaintiff has received from the said County Dispensary Boards in the aggregate more than it should have received, then that the plaintiff be required to refund or repay the same upon judgment being duly rendered and given against said plaintiff in favor of the State of South Carolina for its claim,
33 or any part thereof, so as to maintain and protect the agreement made by the attorneys, however much the same may not have been made under the direction or resolution of said Commission, but in accordance with law and the authority given to or possessed by the Attorney-General and his associates.

VI.

These respondents submit that the judgment rendered by them in the case before them on November 17, 1909, is in accord with, authorized and warranted by the Acts creating the Commission and amendatory thereof, and the conclusions therein found are fully justified and supported by the facts appearing in the judgment rendered by them, which said Acts of the General Assembly these respondents do aver are the proper exercise of legislative power by the General Assembly, and are not in conflict with, nor do they contravene, any of the provisions of the Constitutions of this State or of the United States; and if these respondents, in the performance of their duties and the carrying out of the provisions of said Acts, have affected the conduct of the plaintiff's business, it is not due to any improper, irregular or illegal proceeding upon their part, but the same arises and is due to the improper conduct of the plaintiff in its dealings and transactions with the said State Dispensary, as set out in the judgment of the Commission, hereinbefore referred to; that these respondents have, with impartiality, care and consideration, investigated, examined and determined the questions which have arisen before them in the claim presented by the plaintiff, and they deny each and every allegation contained in said complaint which has not been specifically admitted to be true, or which is in conflict with the allegations and averments made by these respondents herein.

34 Wherefore, they pray that the said rule issued and served upon them be discharged and the complaint herein dismissed.

ANDERSON, FELDER, ROUNTREE & WILSON,
W. F. STEVENSON,
B. L. ABNEY,
Attorneys for Commission.

J. FRASER LYON,
Attorney General.

April 25, 1910.

STATE OF SOUTH CAROLINA,
County of Richland:

—— ——, being duly sworn, deposes and says that he is — member of the State Dispensary Commission; that he has read the foregoing Return and Answer, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

—— ——.

Subscribed and sworn to before me, this — day of April, A. D., 1910.

—— ——, [SEAL.]
Notary Public for South Carolina.

[Duly signed & sworn to.]

35 An Act to Further Provide for Winding Up the Affairs of the State Dispensary.

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina: That the State Dispensary Commission is hereby authorized and empowered, in addition to the powers heretofore conferred upon it, to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations heretofore doing business with the State Dispensary, and to fully investigate transactions by any and all persons, firms or corporations with the State Dispensary, and to make settlement of all claims in favor of the State against any such persons, firms or corporations, and collect and receipt for the same.

SEC. 2. For the purpose of carrying out the provisions of this Act, the State Dispensary Commission shall have all the powers and privileges conferred upon it by any and all previous Acts and amendments thereto.

SEC. 3. Any finding of the State Dispensary Commission, under the provisions of this Act, shall be final, and upon such finding the Dispensary Auditor shall deduct the amount, or amounts, so found to be due and owing the State from any sum or sums that may be found to be due and owing by any county dispensary to any such person, firm or corporation found by the State Dispensary Commission to be indebted to the State, and each and every county dis-

pensary board and other officer in charge of county dispensary funds or assets arising from the sale of property belonging to a county dispensary, or dispensaries, shall, before paying any such person, firm or corporation so found to be owing the State, any sum or
36 sums of money whatsoever, turn over to the State Dispensary Commission a sufficient sum of money, or so much as may be on hand, to pay the debt due the State, any balance remaining to be applicable to any just claim of such creditor against a county dispensary. A receipt of the State Dispensary Commission shall be a sufficient voucher for the payment of any funds found to be due the State.

SEC. 4. That the State Dispensary Commission is hereby authorized and empowered to order any officer, or officers, in charge or custody of any fund or funds arising from the sale of the assets of any former county dispensary, or of any assets belonging to any existing county dispensary, to withhold payment of the same until the further order of the State Dispensary Commission, and any and all officers and persons whomsoever are forbidden upon the order of the State Dispensary Commission to pay out any such fund until so permitted by the said Commission.

SEC. 5. In case any person, firm or corporation shall fail or refuse when required by the State Dispensary Commission to produce any book, paper, document or witness, or shall refuse to submit to the authority or jurisdiction of the said State Dispensary Commission, such person, firm or corporation shall be deemed to have abandoned its claim or claims against all county dispensaries, and the amount of such abandoned claim shall be turned over to the State Dispensary Commission as an asset of the State Dispensary: Provided, all persons, firms or corporations shall have not less than ten days' notice of any hearing of any and all claims, and shall have full opportunity to be heard in their own behalf: Provided, further, the Attorney-General, or other attorney for the State, shall file with the State Dispensary Commission a statement showing the amount claimed
37 to be due by each such person, firm, or corporation, to the State, and a copy of such claim shall be mailed to the address of such person, firm or corporation not less than ten days before the date fixed for hearing thereon.

SEC. 6. In any and all cases where the State Dispensary Commission has heretofore found any amount due the State by any person, firm or corporation on account of dealings with the State Dispensary, the several county dispensary boards now existing and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county dispensaries heretofore existing shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State.

SEC. 7. The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this Act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a

transcript of said judgment shall be filed in the office of the Clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated.

SEC. 8. In all cases where any conflict may arise between the provisions of this Act and any other Act or Acts of the General Assembly concerning or regulating any of the matters covered by this Act, the provisions of this Act shall control.

SEC. 9. In all cases pending before the said State Dispensary Commission upon any claim or claims against any person or persons, or any corporation or corporations, owning any real estate in
38 any county in this State, the said commission shall file in the office of the Clerk of Court in each county where such real estate is situated a notice of the pendency of such cases and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon any such real estate acquired subsequent to the filing thereof, and the debt found by said commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

SEC. 10. This Act shall take effect immediately upon its approval by the Governor.

In the Senate House, the 19th day of February, in the year of our Lord one thousand nine hundred and ten.

THOS. G. McLEOD,
President of the Senate.
RICHARD S. WHALEY,
Speaker of the House of Representatives.

Approved the 23d day of February, A. D. 1910.
M. F. ANSEL, *Governor.*

(Acts 1910, page 876.)

39 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, Chairman; JOHN McSWEEN, A. N. WOOD, AVERY Patton, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return of W. F. Stevenson to Rule to Show Cause.

The respondent, W. F. Stevenson, makes the following return to the rule herein served:

1. That he adopts so much of the return of B. L. Abney, Esquire, as is not inconsistent with the statements hereinafter made.

2. That he was employed on the 19th of February, 1907, as the general counsel of the State Dispensary Commission, and has been acting in that capacity up to the present time.

3. That on the afternoon of November 20, 1909, respondent was called over the long distance telephone by Mr. W. H. Lyles,
40 representing the Carolina Glass Company, and from the statements made by Mr. Lyles, respondent understood that he was in doubt whether the money then due from the County Dispensary Boards to the Carolina Glass Company had been held up pursuant to orders issued either by the Governor, the State Dispensary Commission or the Attorney-General (respondent is not sure which), and he desired to know if it was the intention to hold future as well as past shipments, and it was represented to him that there were contracts outstanding to furnish glass to county dispensaries which would not be filled if the said orders should apply to shipments made subsequent to that date; that the situation would cause great embarrassment to the county dispensaries, inasmuch as they were compelled to have the glass, and were asking that the contracts be carried out; that respondent is informed and believes that there was about ten thousand dollars due to the Carolina Glass Company from the various county dispensaries at that date, and in consequence of the statements of Mr. Lyles he agreed that the subsequent shipments would not be held up, and that the question of holding or releasing the moneys already due was to be taken up and settled by a conference with the attorneys, and in the meanwhile the status that then existed should remain; that is, that all sums then due by all Dispensary Boards were to be held until further orders; that in consequence of that, the letter was written which is set forth in the petition of the Carolina Glass Company, found on pages seven and eight of the printed copy of the complaint, restricting the agreement to future shipments and leaving the matter of amounts already due to be determined thereafter. The following paragraph of the letter deals with that feature:

"I will confer with you as to the accounts due the company as soon as I have reached a determination as to them."

Mr. Lyles about the same time wrote respondent a letter, which is exhibited herewith.

41 That pursuant to the understanding, and without going further into the matter, respondent and his associates took no action thereafter in the Court of Common Pleas, as had been contemplated, to have the money held, supposing that, until some agreement was reached, there would be no interference with the money which was then due. No conference was ever suggested by the attorneys for the Carolina Glass Company, and while many other cases were instituted holding up funds due to parties in the same plight as the Carolina Glass Company, no suit was instituted in this case, reliance being placed upon the moneys being undisturbed as a result of said agreement. Respondent on investigation now finds that, instead of the Carolina Glass Company's collecting only for business shipped subsequently, they have collected also a large part of the

money due on and prior to November 20, 1909, and that the sum that is now due to them from all sources, as shown by their petition, is $6,355.92; whereas, had the agreement as respondent understood it been lived up to, there would be, as he is informed and believes, a little over ten thousand dollars due the said Glass Company, held to protect the State's rights as against said company.

Respondent further says that in this matter he is acting as attorney for the State of South Carolina, and is not liable to be enjoined or sued, as it is indirectly a suit against the State.

Wherefore, he demands that the rule be dismissed as to him, with costs.

B. L. ABNEY,
W. F. STEVENSON,
ANDERSON, FELDER, ROUNTREE & WILSON,
Defendant's Attorneys.

J. FRASER LYON,
Attorney-General.

April 25, 1910.

42 STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me W. F. Stevenson, who on oath says that the allegations of the foregoing return are true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

W. F. STEVENSON.

Sworn to and subscribed before me this 25th day of April, A. D. 1910.

C. S. MONTEITH, [SEAL.]
Notary Public for S. C.

EXHIBIT.

(Copy.)

NOVEMBER 20, 1909.

W. F. Stevenson, Esq., Cheraw, S. C.

DEAR SIR: Mr. John T. Seibels and I, representing the Carolina Glass Company, of this city, today called on the Attorney-General and the Governor with reference to the claims of that company against the county dispensaries, and were referred by them to you, with the information that you had charge of the claims of the State arising out of the findings of the Commissioners investigating the dispensary affairs.

The situation is just this: We notice by the morning papers that his Excellency, the Governor, has issued an order, directed to the county dispensaries or the auditor of the county dispensaries, requiring them to withhold payment of all funds due to certain liquor houses named in the order, with a view of having proceedings taken to sequestrate the same for payment of claims due, or supposed to be

due, to the State of South Carolina. We do not notice the name of the Carolina Glass Company in that order, and the Governor and the Attorney-General tell us that no special conference has been had with reference to that company. It being a domestic corporation,
43 having its place of residence and business in the City of Columbia, we infer that it is not your purpose to direct the sequestration of the accounts due to the company by the county dispensaries and the question presents itself under these circumstances.

The county dispensaries now running, or some of them at least, have contracts with the Carolina Glass Company for the periodic or occasional delivery of bottles, demijohns, etc. There are now orders in the hands of the company from the Aiken dispensary and the Richland dispensary, and perhaps one or two others, for the prompt shipment of bottles and demijohns, and, of course, if the company's claims for these shipments are to be held up and not paid, it is not a prudent thing for them to make the shipments. The officers of the company, under the advice of Mr. Seibels and myself, have concluded, notwithstanding the embarrassment which the matter may cause, to fill the orders which they now have on hand ready for shipment, relying upon the good faith of the State authorities not to interfere with the payment, at least for these shipments.

I have put in a call over the long distance telephone for you in order that I may converse with you on this subject, but would be very glad if you would give me a prompt reply to this letter. We would be glad to know, in the first place, if you are going to order the holding up of the amounts already due by the county dispensaries to the Glass Company; and, in the second place, whether you would consent to the arrangement that all amounts hereafter incurred should be paid whether the amounts already due are held up or not. Upon the answer to this last query depends whether the company can continue to fill the orders now on hand.

Yours truly,

(Signed) WM. H. LYLES.

W. H. L.—T.

44 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against

W. J. MURRAY, Chairman; JOHN McSWEEN, A. N. WOOD, AVERY Patton, and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return of B. L. Abney to Rule to Show Cause.

B. L. Abney, upon whom has been served a rule to show cause before the Supreme Court of the State of South Carolina why the per-

petual injunction and other and further relief prayed for in the complaint annexed to said rule should not be granted, for cause and in answer to the said complaint shows:

That just after the rendition of the decision of the State Dispensary Commission in the matter of the Carolina Glass Company v. The State, the firm of Anderson, Felder, Rountree & Wilson, who,
45 he was advised and informed, had been employed as attorney's to collect certain claims which the State had against certain persons, firms and corporations by reason of their improper and illegal transactions and dealings with the old State Dispensary and its officials, among which claims was one against the Carolina Glass Company for $28,419.24, requested him to become associated with them; that at that time it was not determined whether or not an independent action would be brought against the said Glass Company, and that his employment with regard to this case was dependent upon the event whether such suit or further independent action would be brought in the future.

That thereafter a copy of the letter of W. F. Stevenson to Mr. W. H. Lyles, attorney, of date November 20, 1909, was received by this respondent, but no further action or attention was given to the matter, so far as he can now recall; that a few days subsequent to the approval, on the 23d of February, 1910, of the amendatory Act mentioned in said complaint, this respondent, with the Attorney-General and other counsel, concluded that it was proper that proceedings should be instituted before the State Dispensary Commission, in accordance with the terms of said Act, and that notices mentioned therein, and which are set out in paragraph nine of the complaint, should be given; that the same was prepared by Mr. Stevenson, with the approbation of this respondent and other counsel, and he is informed that the same was filed in the office of the Clerk of the Court of Common Pleas for Richland County. This respondent, however, has no personal knowledge that any such notice was given to the chairman of the County Dispensary Board of Richland County, or any other parties. He is informed that some demand was made upon the County Dispensary Board of Richland County, as alleged in paragraph ten of the complaint, in pursuance of the provisions of the said Act.

This respondent, outside of and beyond the matters above set forth, does not recall that he has taken any part in any pro-
46 ceeding or action against the Carolina Glass Company, and does not know, of his own knowledge, of any matters and things in said complaint stated; but, as and for a further answer and return to said complaint, and made upon information and belief, he adopts the return and answer made and filed this day by the State Dispensary Commission.

Wherefore, he asks that the said rule be discharged and the complaint dismissed as against him, and he will ever pray.

B. L. ABNEY.

April 25, 1910.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me B. L. Abney, who being duly sworn says that he has read the foregoing return and answer and that the same is true of his own knowledge, except those matters therein stated to be upon information and belief, and as to those he believes it to be true.

B. L. ABNEY.

Sworn to and subscribed before me this 25th day of April, A. D. 1910.

C. S. MONTEITH, [SEAL.]
Notary Public for S. C.

47 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return of J. Fraser Lyon, Attorney General, to Rule to Show Cause.

J. Fraser Lyon, upon whom has been served a rule to show cause why the perpetual injunction and other and further relief prayed for in the complaint annexed to said rule should not be granted, for cause and in answer to said complaint shows:

I.

That he admits that he is now and was during the times mentioned in said complaint the duly elected and qualified Attorney-General of the State of South Carolina, and as such, under
48 the Acts of the General Assembly mentioned in said complaint and concerning the winding up of the State Dispensary, was and is the legal adviser of the said State Dispensary Commission, and further admits that the plaintiff, through its attorneys, Messrs. William H. Lyles and John T. Seibels, did communicate with him with regard to the matter mentioned in paragraph eight of said complaint, and in the affidavits of said William H. Lyles and John T. Seibels, and that he referred said attorneys to Mr. W. F. Stevenson, who was taking active charge of the claim of the State of South Carolina against the plaintiff for the amount which the Dispensary Commission in its investigation had ascer-

tained to be due the State over and above the claim which had been presented to it, and that later he received from Mr. Stevenson a copy of the letter of date November 20, 1909. That with regard to the further allegations of the complaint and said affidavits, this respondent adopts the return and answer of the State Dispensary Commission as his return and answer.

II.

Further showing cause and making return to said rule, this respondent respectfully shows to the Court that by the statutory law of the State, and by the Acts of the Legislature concerning and providing for the winding up of the State Dispensary, he as Attorney-General, is required to advise the said State Dispensary Commission on the part and behalf of the State, and to take such other and further proceedings as the Attorney-General of the State ought to and should in the premises take for the protection and enforcement of the rights and claims of the State against any and all persons owing the State on account of and by reason of their dealings and transactions with the old State Dispensary, and that he, as such
Attorney-General, has, in the performance of the duties and
49 requirements of such statutes, proceeded in such manner and
in only such manner as is directed and provided for by law, and he respectfully submits to the Court that, as an officer of the State, acting under the statutes of such State, he is not liable and responsible for the advice given and conduct concerning such matters in any action, suit or proceeding in the courts of this State, either individually or as an officer of the State, and he, therefore, submits to the Court that no cause or causes of action is set forth in said complaint or affidavits against him to which he should make answer and reply.

Wherefore, he asks that the said rule be discharged and the complaint herein dismissed, so far as this respondent is concerned.

J. FRASER LYON,
Attorney-General.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me, J. Fraser Lyon, who, on oath, says that he is the Attorney-General of the State of South Carolina; that he has read the foregoing return and answer, and that the same is true of his own knowledge, except as to those matters herein stated on information and belief, and as to them he believes it to be true.

J. FRASER LYON.

Sworn to and subscribed before me, this April 28, 1910.

A. S. SALLEY, JR., [L. S.]
Notary Public for South Carolina.

50 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY Patton and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Return of Anderson, Felder, Rountree & Wilson to Rule to Show Cause.

The firm of Anderson, Felder, Rountree & Wilson do hereby make return to the rule herein and say:

That they adopt the statements in the returns of their correspondents, the State Dispensary Commission, B. L. Abney, Esquire, W. F. Stevenson, Esquire, and the Attorney-General of the State, as their return, in so far as the same is applicable to them.

Wherefore, they ask that the rule be dismissed as to them, with costs.

ANDERSON, FELDER, ROUNTREE & WILSON.

April 25, 1910.

51 STATE OF SOUTH CAROLINA,
County of Richland:

Personally comes Clifford L. Anderson, who, on oath, says that he is a member of the firm of Anderson, Felder, Rountree & Wilson; that he has read the foregoing return, and that the statements therein made are true of his own knowledge, except those made upon information and belief, and as to those he believes them to be true.

CLIFFORD L. ANDERSON.

Subscribed and sworn to before me, this May 2d, 1910.

[SEAL.]

D. W. McLAURIN,
Notary Public for S. C.

52 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910, in the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY, Chairman, et al., Defendants.

Evidence.

COLUMBIA, S. C., 11 *May*, 1910.

Pursuant to the following Order of the Supreme Court signed by Hon. Ira B. Jones, Chief Justice, and dated April Term, 1910, and filed 2 May, 1910, to wit, "The defendants having made return to the Rule to Show Cause in the above case and Counsel having stated that there are questions of fact involved, it is now

Ordered that it be referred to the Master for Richland County to take the testimony upon such questions of fact as arise upon the Complaint and affidavits annexed thereto and the Returns and Answers of the defendants and report the facts to this Court on or before the 19th of the present month," I this day held a reference herein at the office of the Master for Richland County in the County Court House, in said City.

Present:

Messrs. Lyles & Lyles, D. W. Robinson and John T. Seibels, on behalf of the Petitioners;

Hon. J. Fraser Lyon, W. F. Stevenson, Esq., and B. L. Abney, Esq., on behalf of the Respondents.

The Pleadings were read.

Mr. Robinson called Mr. WILLIAM H. LYLES, on behalf
53 of the Petitioner, who, being duly sworn, testified as follows:

Q. Did you have any conversation or transaction on November 20, 1909, with Mr. Stevenson or with anyone representing the State Dispensary Commission, or the State of South Carolina, with reference to moneys coming to the Carolina Glass Company on its contracts for glass furnished to the County Dispensaries?

A. I did. On that day Mr. John T. Seibels and I having noticed a reportorial statement in the morning papers about the action of the Dispensary Commissioners with reference to amounts due by certain liquor houses by the several County dispensaries went down to the State House and saw the Governor and the Attorney General with reference to the matter.

The result of this interview was embodied in a letter which was written by me immediately upon my return to my office to Mr. Stevenson.

That letter was dated the 20th of November, 1909, and is copied,

I think, correctly, although I have not compared it with my letter press copy, in the return of Mr. Stevenson in this case.

Mr. ABNEY: We will object to the introduction of that letter. That letter simply shows what Mr. Lyles considered to be the result of his interview, and we would ask that he detail the interview, what he said and what they said with regard to it, so that we may draw our own conclusions and results from it.

Mr. ROBINSON: Go on in your own way. That can come out on cross examination?

Taken subject to objection.

A. That letter had been written in my office and signed by me, I having put in a call for Mr. Stevenson at Cheraw over the
54 long distance phone and having succeed- in getting into communication with him, had the letter in my hands at the time of my conversation with Mr. Stevenson over the phone, and I told him that Mr. John T. Seibels and I had been down during the morning to see the Governor and the Attorney General with reference to the amounts, without stating what they were, that were then due by several of the County Dispensary Boards to the Carolina Glass Company for glass, and I stated to him that both the Governor and the Attorney General had said to us that he, Mr. Stevenson, was the attorney specially charged with this matter, and that we, Mr. John T. Seibels and I, would have to communicate with him, and made him understand that this was my purpose in calling him up over the phone.

I stated to him that we had seen in the morning papers the report to the effect that orders had been issued by the Governor to certain County Dispensary Boards to hold up sums of money due by them to certain liquor houses, that we had noticed that the name of the Carolina Glass Company did not appear in the report, and that we had assumed that this was because the Carolina Glass Company was a d*m*omestic corporation, and that we assuming that the hold up was to give an opportunity to the State of South Carolina to commence proceedings by attachment against the liquor houses named, and the Carolina Glass Company being a domestic corporation, that it was not their purpose to hold up the funds as to that company.

The conversation with Mr. Stevenson was substantially the same as the statements embodied in my letter previously written, varied, of course, by the different style, that is, one was conversational and the other was a formal communication.

Q. What did Mr. Stevenson say with regard to this matter?

A. Mr. Stevenson over the phone did not say anything material as I recollect it.

55 I myself was careful to say nothing except to the effect of the statements contained in the letter, and I asked Mr. Stevenson as soon as he received my letter to give me a prompt reply in writing so that the Glass Company could know whether to ship out certain carloads of bottles that had been ordered by the Richland Dispensary and by the Aiken Dispensary, I think.

Mr. Stevenson was very courteous in his conversation and said

that he would reply as soon as my letter was received, or that he would reply.

The next morning I got a letter from him. It was evidently written before my letter of November 20, 1909, was received by Mr. Stevenson.

It was written on the afternoon of the same day of the conversation, and that letter makes me think that perhaps I asked him in the conversation to give me in writing his statement with reference to the matter at once. It was evidently written before my letter of the 20th was received by him.

Q. Is that letter set out in your own return?

A. That is the letter that is set out in the complaint.

Q. Complaint I mean?

A. In the case of Carolina Glass Company against Murray, and others.

Q. Did you receive any further communication from Mr. Stevenson in reference to this matter?

A. I received nothing from Mr. Stevenson at all with reference to the matter, and never had any further conversation with him.

Mr. Stevenson in that conversation did not say anything whatever to me to lead me to suppose that the Carolina Glass Company was not to collect the amounts that were then due by the several County Dispensaries, if it could do so.

There was certainly nothing said by me in the conversation to indicate that we would consider ourselves as even morally
56 bound not to get the money if the County Dispensary Boards would pay it.

Q. Is there anything further with reference to that point you wish to state?

A. I understood from his letter, and my action was based entirely upon his letter, and not upon the phone conversation, that they regarded their right to get jurisdiction of the Carolina Glass Company in any action which might be commenced as certain, and, therefore, that they did not contemplate any extraordinary proceeding in the way of holding up the funds that were due to the Carolina Glass Company.

I thereupon so advised the Carolina Glass Company that it was perfectly safe for that Company to go on and make sales and deliveries of bottles to the several county dispensary boards until we should receive further notice from Mr. Stevenson or other attorneys engaged in the matter.

Q. Now, Mr. Lyles, at page 15 of the Return to the Rule to Show Cause filed by W. J. Murray, et al., it is stated that the Carolina Glass Company and its counsel had full knowledge or opportunity to know of the Act (referring to the Act of February 26, 1910, entitled An Act to Further Provide for Winding up the Affairs of the State Dispensary) while it was on its passage in the General Assembly. What have you to say in reference to that?

A. I first saw, I think, in the State that a bill to that effect had been introduced into the General Assembly. I then ascertained that the bill *had been* as introduced into the House had been referred to one of the committees of the House, and showing some interest in

the matter by an effort made with the chairman and the clerk of the committee to see the bill as introduced, the clerk and the
57 chairman became aware of the fact that I was probably interested in the subject, and on the afternoon of the consideration of the bill before the committee I was down at the Senate end of the building before another committee, I think the Railroad Committee of the Senate, when I received a message from the chairman of the committee, as I understood at the moment that it was a committee of the House, but it met in the Senate chamber, and probably was a Senate committee to which the bill was referred, that the bill was up for consideration and wanted to know if I wished to be heard.

I went before the Committee, and I found there besides the members of the committee the Attorney General and Mr. Wash Clark and Mr. Townsend, I think it was, the clerk of the Committee.

I was asked if I wished to be heard on the bill, and I said that I had read the bill, and did not suppose that it was intended to affect the interests of the Carolina Glass Company as to its claim. I did not suppose that it was intended to have a retroactive effect.

My impression is that the bill was then in a materially different form from that in which it finally passed and became a law.

The Attorney General spoke up and said that I was right in my supposition that it was not intended to affect the interests of the Carolina Glass Company.

I was not at all interested in the passage of the bill from any other standpoint though I regarded it as very unfortunate that the State of South Carolina should deem it necessary or important, some such expression as that, to have legislation of such a confiscatory character passed, or language to that effect. I cannot remember the exact words that were used.

58 I then thanked the chairman of the committee for having called me and retired.

To that extent I did know of the pendency of the bill in the General Assembly.

How I got the impression I do not know that it was before a committee of the House, but the sitting of the committee was held in the Senate chamber.

Q. Is that all the knowledge you had of it during its passage?

A. That is all the knowledge I had of it. I did not afterwards concern myself with reference to the bill at all, nor can I state positively what was the form of the bill at the time it was up for consideration before this committee, but think that it was in a substantially different form from that in which it was finally passed.

Q. Is there anything else you wish to say about it?

A. Nothing else.

Cross-examination:

Mr. ABNEY: Mr. Lyles, didn't you also see published on the morning after, or the next morning after that, the resolution passed by the State Dispensary Commission?

A. The morning after what?

Q. The morning after the rendition of that judgment in the Carolina Glass Company case?

A. The morning after the rendition of that judgment in the Carolina Glass Company case?

Q. Yes?

A. I had seen either a repo-torial account of the action of the Dispensary Commission or a publication of the resolution on the morning of my conversation with Mr. Stevenson over the phone, and on the date of the letter which was written to Mr. Stevenson.

59 I don't recollect now whether that was the morning after the publication of the judgment against the Carolina Glass Company or not.

Q. The date of the judgment of the Carolina Glass Company case is November 17. When did you read or become aware of that decision?

A. I became aware of it as soon as it was filed. If it was filed on the 17th, I think I knew of it that very day. If it was not filed until a day or two afterwards, I did not know of it until it was filed.

Q. So that you knew that the Dispensary Commission had in its findings declared that the Carolina Glass Company owed the State something near twenty-nine thousand dollars?

A. I did certainly at the time I wrote that letter to Mr. Stevenson. I knew that.

Q. And at the time you saw the resolution of the State Dispensary Commission, and the direction of the Governor published?

A. Yes, at the time I knew of the existence of such a finding.

Q. When you went down to the State House did you see the Governor separately, and the Attorney General separately, or did you see both together?

A. I saw them separately. I can't say which I saw first, which Mr. Seibels and I saw first, probably saw the Governor first.

Q. First?

A. I say probably. I would not undertake now to say which one we saw first.

Q. You say you had the letter, that is your letter of the 20th of November, in your hands when you were phoning Mr. Stevenson?

60 A. I had that letter or a copy of the letter.

Q. Or a copy?

A. Yes, sir.

Q. And then I believe you told him that you had certain amounts, statements of amounts, due by the county dispensary boards in your hands, but you did not tell him what those amounts were?

A. I did not say that. You misunderstand. I did not say we had certain amounts in our hands.

Q. At the time statements of the amounts?

A. No, I did not state that. I had never seen a statement of the amounts then due by the several county dispensary boards. What I said was that I stated to him that there were certain amounts due.

Q. As a matter of fact, Mr. Lyles, you knew that there was a pretty large—you had been informed by your client that [illegible] were

certain county dispensary boards owing the Carolina Glass Company for glass already sold and delivered, did you not?

A. Yes, sir, we knew that, had that information from your client.

Q. Now, you had that information when you phoned Mr. Stevenson?

A. Yes, I had that information. We so understood.

Q. You knew there were what were called dry counties?

A. Yes, counties where the dispensary had been voted out.

Q. Certain of them were owing the Carolina Glass Company?

A. We so understood.

Q. You knew certain counties were wet counties that owed the Carolina Glass Company certain amounts, did you not?

A. We so understood.

61 Q. For glass already sold and delivered?

A. Yes, sir.

Q. And you had an idea as to what that amount was?

A. No, I did not. My recollection now is that the amounts were not stated to us at all by the officers of the company.

Q. When you took this matter up with the Governor and the Attorney General it was to obtain possession, or get in position to collect the amounts already due, or was it to go on with glass which had been sold or ordered, and was in the way of delivery?

A. The occasion of our taking the matter up on that day was that orders had been received from the Aiken Dispensary, I think, and the Richland Dispensary Boards for the prompt shipment of glass, and the Carolina Glass Company was unwilling to ship that glass if it was the purpose of the State authorities to pass an order for the holding up of the amounts that would become due for that glass.

Q. That was your principal object, was it?

A. That was, I think, our sole object in taking the matter up for consideration at that time.

Q. Now, you had your letter before you, you say?

A. I think so, yes, sir, I am sure I did.

Q. Don't you think, Mr. Lyles, upon reference to your letter and refreshing your mind, that you made two distinct propositions to Mr. Stevenson over the phone?

A. I don't think so, sir. I don't think I made any proposition with reference to the amounts that were then due, or that would become due for glass which had been already delivered. I think the subject was mentioned merely as introducing the conversation.

Q. Just as a matter for you to explain?

62 A. I would be glad to explain it if I could.

Q. Referring to your letter, the next to the last sentence of the last paragraph, what do you mean by this, "We would be glad to know, in the first place, if you are going to order the holding up of the amounts already due by the County Dispensaries to the Glass Company". Doesn't that refer to all the amounts?

A. I think it does, evidently it does.

Q. Don't you ask him about that, "in the second place, whether you would consent to the arrangement that all amounts hereafter

incurred should be paid whether the amounts already due are held up or not"?

A. Yes.

Q. After looking at that don't you think you took both of these subjects up with him over the phone?

A. My recollection is that I did not over the phone, that I did not in this letter make any suggestions to Mr. Stevenson as to any understanding about the amounts that were due or were to become due for glass already sold but that I was merely asking for information on that subject.

What I wanted was, and the occasion of my conversation and correspondence, was as to the future delivery of glass.

Q. After you received Mr. Stevenson's letter of the 20th of November, you say you advised the Glass Company that they could safely go on and comply or fill the orders that had been made?

A. I did, yes.

Q. Did you also advise that they could safely go on and collect the moneys already due?

A. I don't think I did. I don't think I said anything about the matter.

Q. Did they do that without your advice?

A. I think so, but I certainly would have advised them to do it until some other order was made by the Dispensary Com-
63 mission or the attorneys engaged in the case.

Q. Do you think you would after noting the last sentence of Mr. Stevenson's letter?

A. I certainly would.

Q. As a matter of fact, don't you think you did?

A. Advise them to collect the money?

Q. To go ahead and collect the moneys that were due in these dry counties?

A. I don't think that I did, though if my advice had been asked on the subject, I would not have hesitated to do so.

Q. You would not have hesitated under this letter of Mr. Stevenson's?

A. No, sir, not at all.

Q. Look at page seven or eight of your Rule to Show Cause, at the top of page 8?

A. Yes, sir.

Q. In the letter he says to you, "I will confer with you as to the accounts due the company as soon as I have reached a determination as to them"?

A. Yes, sir, that is correct.

Q. Would you have advised your people, and did you advise your people to go ahead and collect money after receiving that letter?

A. I say I don't think my advice was asked about that, but I would unhesitatingly have done so, if they had asked my advice on that subject.

Q. Under that letter?

A. Under that letter.

I had in my letter to Mr. Stevenson said, "We do not notice the

name of the Carolina Glass Company in that Order and the Governor and the Attorney General tell us that no special conference had been had with reference to that Company. It being a domestic corporation, having its place of residence and business in the city
64 of Columbia, we infer that it is not your purpose to direct the sequestration of the accounts due to the Company by the County Dispensaries, and the question presents itself under these circumstances."

I then went on with reference to the other matter. Mr. Stevenson in his letter had said, "The Company being a resident corporation, we haven't the difficulty as to jurisdiction which we have in other cases."

I did not regard the judgment of the Dispensary Commission as worth the paper it was written on.

Q. We will not take any more argument?

A. I am answering your question.

Q. That is no answer?

A. I think it is.

Q. I asked you did you or did you not in view of the last sentence of Mr. Stevenson's letter advise your client to go on and collect the moneys past due by those county dispensaries.

A. I replied to that. I answered that I don't think that I advised it, that I would not have hesitated to advise it, and I am going on giving my reasons.

Q. I don't care for your reasons.

A. I think I am right in giving them.

Mr. ABNEY: I object and ask that they be taken down on a separate sheet.

(They are hereto attached as Exhibit A.)

Q. Now, Mr. Lyles, to go back to our question, do you know when these amounts from these dry counties were collected by your client?

A. I do not. I never knew that they were collected until after the commencement of this action.

65 Q. You have been informed by your client since the commencement of this action that they were collected on the 23rd?

A. 23rd?

Q. On the 23rd of February?

A. I don't know that I have been informed as to when they were collected.

Q. 23rd of November?

A. I don't know that I was informed as to when they were collected.

Q. You did know that when you filed this complaint in this case they had been collected prior to that?

A. Yes, I was informed that they had then been collected. I was informed at that time that they had then been collected.

Mr. STEVENSON: Mr. Lyles, the matter about which you talked to Mr. Lyon as to the Act that was pending related to the question

whether it would affect your Glass Company's appeal. That is what you were discussing, were you not?

A. It was with reference to the claim of the Carolina Glass Company which had been considered by the Dispensary Commission.

Q. It had no reference to anything else?

A. No, it did not have reference to anything else.

Q. And the statement by Mr. Lyon that it did not refer to your Glass Company matter was merely relating to the claim which was then pending on appeal, as I understand it, to the Supreme Court?

A. Well, there was nothing whatever said as to any furture dealings with the County Dispensary Boards, and I had stated that I was only interested in the claim of the Carolina Glass Company which was then under appeal.

66 Q. Under appeal?

A. So I assumed that the Attorney General's remark would properly apply to that.

Q. You were apprehensive that making those findings final would cut off your appeal?

A. Well, I can't say that I was apprehensive of it. I thought that perhaps the act—the bill—that was then under consideration might be considered or claimed as having some influence upon that appeal.

Q. And that was the matter to which Mr. Lyon referred?

A. I think that was.

Q. Was there anything said with reference to any moneys then due from the dispensaries to the Carolina Glass Company—was anything said about that?

A. Nothing was said about those moneys at all at that time.

Q. That was the sole interest of the Glass Company that you were apprehensive might be affected or might be claimed to be affected?

A. That was, and yet I could have conceived that that was affected by any bill which was intended to give validity to that judgment, which judgment I considered to be utterly without validity.

Mr. ROBINSON: Was there anything said in that conversation before the committee by yourself or by the Attorney General as to that bill's effect on the appeal particularly, or was it the bill's effect on the Carolina Glass Company?

A. Well, my recollection is that I stated to the committee that I represented the Carolina Glass Company with reference to that judgment which had then been carried by appeal to the Supreme Court.

67 My recollection is that that was said, and I did not suppose the bill was intended to affect the claim of the Carolina Glass Company at all.

Q. And that proposition was denied by the Attorney General?

A. That was the proposition that was denied by the Attorney General.

68 Mr. Robinson calls Mr. J. C. TOWNSEND, who being duly sworn, says:

Q. Did you have any connection or relation with any of the committees of the General Assembly at its session in January and February last?

A. Yes, sir.

Q. What was that relation?

A. I was Clerk of the Judiciary Committee of the Senate, and also Clerk of the Committee on Police Regulations of the Senate.

Q. Were you present before the Committee on Police Regulations, wasn't it?

A. Yes, sir.

Q. At the time Mr. Lyles appeared before it in reference to an Act then on its passage to further provide for winding up the affairs of the State Dispensary?

A. Yes, sir, I was.

Q. Can you tell us who was present?

A. There was present, Senator Black, from Bamberg, Chairman of the Committee; Senator Alan Johnstone, of Newberry; Senator Crosson, of Lexington. That is all that I can remember.

I remember distinctly that there was not a full committee. There might have been probably others.

The Attorney General was present, Mr. Clark, Mr. Lyles and myself.

Q. What statement was made if any by the Attorney General before that Committee and in your presence with reference to the effect and bearing of that Act upon the claim of the Carolina Glass Company?

A. If you will just allow me to make a statement like this, that at the instance of the Chairman I was asked to call Mr. Lyles,

69 who was then on attendance in the Judiciary Committee room of the Senate at some Committee. I don't remember what Committee.

I called him and he appeared. He was informed by the Chairman of the Committee that they had under consideration a certain bill with regard to Dispensary affairs.

Mr. Lyles wanted to know if it had any bearing on the case with regard to the Carolina Glass Company. To the best of my recollection the Attorney General informed him that it had nothing to do with the Carolina Glass Company case, that the terms of the bill would affect that case in no manner, in no wise, whereupon Mr. Lyles retired.

70 Mr. Robinson calls Mr. WASHINGTON CLARK, who, being duly sworn, says:

Q. Mr. Clark, were you p-esent before the Police Committee of the Senate in January or February of this year when it had before it on its passage An Act to Further Provide for Winding up the Affairs of the State Dispensary?

A. Yes, sir.
Q. Do you recollect Mr. Lyles being there?
A. Yes, sir.
Q. And the Attorney General?
A. He was.
Q. Will you tell us what statement was made in your presence by the Attorney General with reference to the effect of that Act on the Carolina Glass Company?
A. About the same as was stated by Mr. Townsend, that it was not intended to affect the Carolina Glass Company. That is my recollection.
Q. Did Mr. Lyles retire when that statement was made?
A. Mr. Lyles retired.
Mr. ABNEY: Mr. Clark, you were in attendance on this Committee representing Lanahan & Co., were you not?
A. Yes, sir, Lanahan & Son.
Q. Lanahan & Son?
A. Yes, sir.
Q. Lanahan & Son also had an appeal pending from the judgment of the Dispensary Commission?
A. Yes, sir.
Q. Were you not also told that this bill would not affect Lanahan & Son's appeal?
A. I don't know that Lanahan was mentioned.
Q. You were there representing him?
A. Yes, sir.
71 Q. Wasn't L-nahan in the same condition as the Carolina Glass Company?
A. His name was not mentioned at that time. I argued against the bill and the Attorney General in favor of it. I believe he did say that since you mentioned it. That was after Mr. Lyles retired.
Q. Would not that have the same effect, as he told Mr. Lyles that it would not affect the appeal in the case of the Carolina Glass Company?
A. My recollection is he said the bill was not intended to affect the Carolina Glass Company, and then Mr. Lyles retired. He did not connect the two cases at all.
Q. Wasn't Lanahan's case in the same position?
A. As the Carolina Glass Company?
Q. It was on appeal just as the Carolina Glass Company case?
A. Yes, sir, just the same.
Q. You said you discussed the question before the Committee?
A. Yes, sir.
Q. Wasn't the whole discussion before the Committee as to whether or not this bill operated as confiscatory, and would not allow a hearing, as to whether that would be the effect of it, that the parties would not get a hearing?
A. On appeal?
Q. No, the whole bill as it affected that appeal?
A. Yes, sir, that was the gist of the argument. I said that if we

went to the Supreme Court, the State would confiscate the property before we could get back.

Q. Did not the Attorney General say that did not affect, and did not intend to affect, cases on appeal to the Supreme Court?

72 A. I believe he did say in argument that they did not intend for it to affect appeals that were pending in the Supreme Court. I believe he did say that in his argument. I did not connect that with the case of the Lanahan- at all.

Q. You were in the same boat?

A. To the extent that both were on appeal.

Q. Both appealing?

A. Yes, sir.

Q. As I understand, this bill was before the Committee on Police Regulations?

A. Yes, sir.

Q. And you were arguing against the bill and Mr. Lyon in favor of the bill?

A. Yes, sir.

Q. The Attorney General was contending that it was a proper bill and was giving his views of the effect of the bill and what the bill was intended for, and the question that you were arguing was to be determined by the Committee, what kind of report to make?

A. Yes, sir, favorable or unfavorable.

Q. And they reported favorably?

A. That is what I understand. It passed.

Mr. ROBINSON: That is our case.

73 Mr. Abney calls Mr. W. F. STEVENSON on behalf of the Respondents, who, being first duly sworn, testified as follows:

Q. Mr. Stevenson, will you just give in narrative form the facts and occurrences in regard to the communications had between you and Mr. Lyles with regard to this question of holding up the amounts past due to the Carolina Glass Company?

A. On the 18th of November after the judgment of the Commission had been filed there was a conference between Mr. Abney, Mr. Felder and myself; there was a certain course mapped out, and Mr. Abney was to prepare the pleadings to bring suits to enforce certain claims of the State against parties who had been found to owe the State, and that night I went to Cheraw, and on Saturday afternoon the 20th I had a call from Mr. Lyles at the long distance telephone. He stated in his conversation that he had been referred to me by the Governor and the Attorney General, and without saying so in so many words, he impressed me as being in doubt as to whether the claims already due the Carolina Glass Company were held up.

Mr. ROBINSON: The plaintiff objects to the witness giving his impressions, and requests that the witness give the facts that occurred.

The WITNESS: Mr. Lyles stated that he had interviewed the Governor and the Attorney General, and that he had not seen the name of the Carolina Glass Company in any of the orders issued holding up funds, and that he had been referred to me, and then passed on to

that matter. He said that the Glass Company and certain dispensaries were in an embarrassing position from the fact that they had
74 contracts to furnish glass, and that if we proposed to hold up the money for new shipments, they could not ship them, and that he wanted to know that in case we insisted on sequestrating, that was the term he used, the funds already due, whether I would not agree that we would not claim and sequester the funds from subsequent shipments.

I told him that as to the funds already due I could not release anything, but would see him as soon as we had a full conference, but that as to future shipments, I would say that until further notice that we would not make claim for this.

He thanked me and asked me to write him a letter to that effect, and stated that he had written me a letter, before he had gotten me on the phone.

Mr. Lyles stated a while ago that I did not make him any promise, that we had no understanding over the telephone. His memory is incorrect as to that, and his petition states that part of it correctly when he states that he "was informed by the said Defendant W. F. Stevenson that no action would be taken to interfere with or hold up the amounts that might become due to the plaintiff on account of goods that might be sold or shipped to the said County Dispensaries on or after the said 20th day of November, 1909; and being requested by the said Wm. H. Lyles to give him such a statement in writing, the said defendant W. F. Stevenson, on the said 20th day of November, 1909, wrote to plaintiff's said attorney a letter, as follows, to wit:"

That is a correct statement of what occurred.

The agreement was made over the telephone and my statement of it is that there was to be nothing done with the claims already due until we had a further conference, but that for future shipments there was to be no claim until further notice.

75 Immediately when I left the telephone late on Saturday evening I wrote the letter which is set out in the petition.

I sent a copy of it to each of my associates and at the same time I wrote them an accompanying letter, which I hold in my hand, in which this statement was made to them, stating the agreement I had made over the telephone, "We are holding on——

Mr. ROBINSON: We object to an extract from the letter unless the whole letter is put in.

The WITNESS: "We are holding on to the money in the County Dispensaries already due them, and believe this will bring about a settlement".

And another extract, "I believe that holding the funds now due them will cause them to make terms and abandon their appeal and pay something to be let alone".

This is the letter I wrote immediately after writing the one to Mr. Lyles and with it I sent a copy of the letter written to Mr. Lyles which he set out in the petition.

Q. This is a copy of that letter?

A. A copy of the letter to Mr. Lyles accompanied that letter.

The telephone conversation was not a long one, and that request of Mr. Lyles was urgent, for I said in writing that the intention was not to sequester the funds arising from future shipments, as that was the important issue at that time, and it was done immediately.

Mr. Abney offers in evidence letter signed by W. F. Stevenson at Cheraw, S. C., November 20, 1909, and directed to Mr. T. B. Felder, Atlanta, Ga.

Received in evidence and marked Exhibit B.

76 The WITNESS: I never had any suggestion of a conference by counsel for the Glass Company, being under the impression that the funds amounting to eleven thousand dollars were then being held, and we did not take action according to the course outlined at the conference between Mr. Felder, Mr. Abney and myself, and I will state that Mr. Lyon did not concur in any view as to a settlement of this matter, but insisted that the law take its course.

In so far as any settlement was concerned, the action to sequester was not brought as a result of the fact that I was satisfied that in this agreement we had provided for the holding of the funds until the Supreme Court should have passed upon it, or until there was some other agreement.

Mr. Lyles may have understood it that way. If so, our arrangement was made on a misunderstanding between us. The telephone conversation was at a busy time of the day, and it is always possible for that to occur.

On Monday morning, the 22nd, I went immediately to the Marlboro Court, and it was probably the middle of the next week before I saw Mr. Lyles's letter to me, and the matter having all been arranged I did not read it critically even then. I put it in my file and gave the matter no more attention until this action was instituted.

Q. When did you first learn that the moneys had been drawn out, Mr. Stevenson?

A. After the institution of this action. I was under the impression, and we were resting easy, that the money would stay there until the appeal was heard.

Q. Until this notice was given to the County Dispensary Board of Richland what was the purpose or object was it to violate that agreement, or to then take possession, or make demand for those things after they had pass- out, and that you supposed had been held up under your letter?

77 & 78 Mr. ROBINSON: The plaintiff objects to witness stating the purpose of those papers. They can speak for themselves, if in writing.

Taken subject to objection.

A. The purpose of the Commission was to follow the Act and take possession of those funds which we supposed were there for us, of cou-se, subject to the decision of the Supreme Court.

If they decided that they were not for us, it would have to be refunded, of course. I would not have advised the Commission to have taken out the funds on a breach of faith.

I supposed the funds were there according to what I thought was the understanding and what w-s my understanding, and which caused me to write the letter.

Q. Do you happen to know that any sales and deliveries were made by the Glass Company to any of the County Dispensaries subsequent to the passage of that Act?

A. I don't know of my own knowledge. I know it only from statements from the Dispensary Auditor issued by him, official statements.

Q. Do you know whether any funds at all arising from sales and deliveries subsequent to the approval of that Act was interfered with by the notice of the 26th of February?

Mr. ROBINSON: I object, unless he knows of his own knowledge. Taken subject thereto.

A. There was none.

Cross-examination:

Mr. ROBINSON: Up to the 20th day of November the Dispensary Commission and the counsel representing them had taken no steps to request the holding up of the payment of any sums due the Carolina Glass Company, had they?

A. I don't know of any steps that were taken, but there were several attorneys, you know.

79 Q. I am asking for what you know.

A. There had not been any action taken as a result of a request from me.

Q. And there had been none taken to your knowledge?

A. I did not know of any that had been held up as a result of any order issued.

Q. Then you had not up to the 20th of November held up any Dispensary funds coming to the Carolina Glass Company?

A. I had not.

Q. What do you mean by the sentence in your letter, "Our holding up funds in the County Dispensaries was preventing them shipping the goods?"

A. I mean by that just what Mr. Lyles states, that we were holding up as I understood directly and indirectly *and indirectly* the funds that were now due, and he was afraid that if they shipped the goods they would naturally hold them up also, showing that was my understanding that the funds already accrued were being held up.

Q. But you just now told us——?

A. You must remember that I was in Cheraw, and there was the Governor, the Attorney General, the Auditor and the Dispensary Commission, and I did not know what they had done, and I understood from Mr. Lyles that he considered it held up. That was the impression I got over there, and that was the reason I declined to release that.

Q. You got that from the conversation over the phone that you have narrated?

A. Yes, sir, I did.

Q. The letter to you of the 20th was never answered?

A. No, sir, because I had written a letter some days before. As I say, I did not get that letter until I got through at the Marlboro Court, which my recollection is that it was Friday of the next week.

80 It was past history then. I wrote him what he asked for. He told me he had written a letter and told me to put in writing what we had agreed on, and I did so.

Q. What was your idea when you wrote to Mr. Felder these words, "We are holding on to the money in the County Dispensaries alre-dy due them, and believe this will bring about a settlement; but I write to know whether it is your idea that we hold these funds also?"

A. My idea was this, that I had the impression, as I say, that Mr. Lyles, while he did not say absolutely that they were being held, that he was somewhat in doubt about it, and really I was in some doubt too whether they were being held, but in my agreement I understood I had with Mr. Lyles, we were to keep those funds in that status until I could have a conference with all the attorneys and make some agreement with them.

Q. And the motive of that agreement is expressed in the last sentence?

A. That does not express any agreement. It simply expresses the result of the agreement, and that is as to the funds already due I will have a conference with you when we will determine what course we will take whether they would be released or whether we would hold the funds. That was the re-son for that. That is secondary.

Q. And the statement was that you would confer with him when you reached that conclusion?

A. Yes, sir.

Q. But you did not confer?

A. He did not ask for a conference, and it saved us the trouble of bringing a suit, and — were satisfied if they were willing to leave it standing as it was.

Q. Was it the purpose of the State Dispensary Commission or the attorneys representing it as far as you know to br-ak the Carolina Glass Company?

81 A. No, sir. I stated that in my letter to Mr. Lyles that it was our purpose to enable them to do business, and if we broke the- we would not collect our debt. We wanted to arrange as far as possible to let everybody do business.

Q. Is that what you meant when you wrote that it would not help to break the Glass Company by taking away its trade in that way?

A. Yes, sir, I mean it would not help us to collect our debt. That is what I meant. I did not have any desire—in my letter to Mr. Lyles I said the same thing, that it was our intention to enable the Glass Company to do business, and that is my reason. If we had gone ahead and forced them into bankruptcy we would *lode* our debt. There was no ulterior motive as to the Glass Company except the claim.

Mr. ABNEY: The State Dispensary Commission had already acted

in certain particulars passing a resolution holding up certain funds, and the Governor had already acted in holding up the funds. Was it or not within the power of the Dispensary Commission and Governor Ansel, who representing the State's interest, at any moment to exercise the right or the supposed right to hold up the funds?

A. Yes, sir. My position in the matter was that we requested the Dispensary Auditor to hold it up—it had to be held—and I did not hear anything about what the Dispensary Auditor had done, or had been requested to do.

Q. But after this letter here to Mr. Lyles no action was taken with regard to the matter. It was supposed that it was arranged? Is that it?

A. Yes, sir, that is my understanding acted on by us. We did not care to proceed in unnecessary litigation until the appeal was determined, or to embarrass the Glass Company for the sole rea-
81½ son that we wanted to collect our money.

Mr. ROBINSON: Mr. Stevenson, who framed the Act of 1910 with reference to this matter?

A. I don't know, Mr. Robinson. I did not.

Q. You had nothing to do with it?

A. The Act was well on its way to passage before I ever saw it.

Q. Did you frame any of the amendments subsequently?

A. I don't think I did. I think I carried an amendment framed by another gentleman, and suggested that it go in, and I think in that form it was adopted. I did not frame any amendments myself.

82 Mr. Stevenson calls Hon. J. FRASER LYON, who, being duly sworn, says:

Q. You are Attorney General of South Carolina?

A. I am.

Q. The Act of 1910 relating *the* the Further Winding up of the Dispensary was drawn by whom?

A. I drew it. The whole of it was drawn by myself in my office, and after it was drawn I sent a copy of it to Mr. Felder's firm in Atlanta to be looked over and it came back with, I think, no corrections except possibly the selection of a better word in one or two places.

After that I have forgotten just what changes too- place in it, but there were no changes of very great importance that were made.

Probably the last Section of the Act was added, I am not positive as to that, before its final passage. I believe it was added in the Senate. I forget now who introduced it, possibly Senator Carlisle. He took a good deal of interest in the matter, and I think it was introduced in the House by Mr. Cothran.

A hearing was reached in the Senate. I don't know the Committee before whom it was heard, but the Committee was composed of Mr. Alan Johnstone, Dr. Crosson and Dr. Black from Bamberg—I believe those three were present and heard it.

Mr. Lyles was there in person a part of the time. Mr. W. A.

Clark, Jr., Mr. Washington Clark, and Mr. Townsend were there also.

I will state in this connection that Mr. Townsend was Clerk of one of the Senate Committees, and before that bill was ever introduced, or certainly before it was tacked on as an amendment which finally became law, Mr. Townsend, who wrote that whole business for me, was a Clerk of the Judiciary Committee, and I had it written out with a pen, and I got him to copy it for me.

83 I will say very frankly I did not know Mr. Townsend was connected with any of the firms representing corporations having an interest in this proposed legislation; otherwise, I would have carried it elsewhere.

Q. What connection did he have with Mr. Lyles's office?

A. In Mr. Lyles's office or partner or something.

Mr. LYLES: He is not in my office. He never has been in my office.

WITNESS: Either in your office or Mr. Clark's.

Mr. LYLES: He is now in Mr. Clark's office, and may have been then.

WITNESS: He was at that time.

Mr. LYLES: I don't know anything about that.

WITNESS: As a matter of fact, I had a conference with him in Mr. Clark's office, or yours?

Mr. LYLES: No.

WITNESS: I had a conference with you and Mr. Clark on the same trip, and he was in one of them?

Mr. LYLES: Not in mine.

WITNESS: I found out he was interested in one of these claims after I had this work done, and I know the attorneys appeared shortly.

At the time the Committee advised me that there was going to be a hearing upon this bill, and I went up as the Attorney General of the State and presented my views of the purpose and effect of that bill.

As for entering into any agreement with Mr. Lyles or anybody else about what the purpose of the Commission was or what my purpose was there was absolutely nothing of the kind.

The bill was there engrossed and before the Committee, and, as a matter of fact, had been printed in the Senate Journal some days before that, and anyone who desired a copy of it had the opportunity to get a copy of it and read it, and they had an opportunity to get it out of the Senate Journal where it had been

84 printed in full, and I think it had been printed in the House Journal also, and I expressed the opinion there to Mr. Lyles that the bill would not prevent, and was not intended to prevent, the hearing of his case on appeal by the Supreme Court, and that if the Supreme Court should render a decision reversing the findings of the State Dispensary Commission, that I felt sure that whether the State Dispensary Commission could be forced to return the money or not, that they would return it; that they would plead no immunity from suit or anything of that sort on account of repre-

senting the State, and that the Glass Company would get whatever money the Supreme Court decided it was entitled to.

There was no other statement as to the effect the bill would have with regard to the Glass Company.

Mr. Lyles, I think, probably left about that time, and Mr. Clark argued against a favorable report on behalf of Lanahan & Sons, and I expressed surprise at that time inasmuch as Lanahan at that time had offered to forfeit its claim, abandon its appeal, and pay something like $9,000.00 in addition.

Mr. ROBINSON: We object to anything as to Lanahan as irrelevant. Taken subject to objection.

Teh WITNESS: And we discussed the question of the bill being confiscatory and all that sort of thing, which was urged, and I argued that I saw no reason why they should be interested in something where they acknowledged liability, and were offerring to pay.

As to the effect of the bill I don't think any person of ordinary intelligence could have read that bill, or the Act which finally passed, and failed to have recognized that its purpose was to take charge of such money in the County Dispensaries as was apparently due these various houses that the State Dispensary Commis-
85 sion had found were due and owing the State.

It was in every draft of the Act that was made, and I do not think Mr. Lyles was lured into any false position by anything that was said. He could not have understood that it was an agreement which I undertook to enter into for the State or the Commission.

It was simply an argument before that Senate Committee, I advising a favorable report on that bill, and they opposing it. In fact, I think Mr. Lyles finally withdrew opposition when he learned that his appeal was not affected by it.

I will say that any objection to that bill cannot be upon the *any* ground as to whether or not the Carolina Glass Company could have been defeated in making its appeal, and I gave my statement that I had given my opinion that this Act would not deprive them of this right of appeal, and that even if there was a question along that line, that the State would not make the question, but would allow the appeal to go on undelayed, and that has been my position in this matter throughout.

Mr. ROBINSON: While it was your purpose or view that the Act of 1910 should interfere with or affect the hearing of the appeal, as I understand it, it is your view that the Act was intended to and does affect the remedies for enforcing this claim as well as any other claim that has already been pass- on?

A. That would be clearly a matter of my opinion. The Act is there and speaks for itself.

Q. From what I understood you to say, you expressed your opinion just now?

A. I will say this with regard to that, that if they have been defrauding the State, that the Carolina Glass Company should be made to pay the amounts of money out of which they defrauded the

State, -nd which had been so found, and I believe this, and I tell you now, that Act has made that purpose effective.

86 I will say further in that connection, that I believe the money that is held up in the County Dispensaries, that it will go into the State Treasury where it properly belongs.

In other words, I think that Act has get them before they could run off with the goods. That is my opinion about the matter, but I don't know whether that opinion is worth anything.

87 Mr. LYLES resumes the stand, and testifies as follows, to wit:

I would say this, that what I intended to say, and I think that I did say it, was that there was no understanding or agreement with Mr. Stephenson over the phone except in substance such as is set out in his letter and mine.

I feel sure that Mr. Stevenson was mistaken in his memory as to having said anything about releasing the amounts due to the Glass Company on existing claims. My recollection is clear that nothing whatever was said on that subject. We did not ask him to commit himself, and we did not ourselves say anything to indicate that we would not collect the money, if we could do so.

I never for a moment supposed that Mr. Stevenson would fail to take any steps that he thought he had the right to take as to any claims of the Carolina Glass Company except those for glass to be on that day delivered or thereafter until further notice.

Mr. STEVENSON thereupon took the stand and testified as follows, to wit:

If that is Mr. Lyles's recollection of all that occurred then he and I misunderstood each other entirely which is always possible over the telephone.

As shown by the last clause of my letter and the contemporaneous letter written to my associates I understood thoroughly that until there was a further conference the fund then due would be undisturbed, and I never dreamed that Mr. Lyles or his clients would undertake to collect the same without either asking for that conference, or giving us notice that they would not wait longer for it.

88 Reference was thereupon adjourned, pu-stuant to agreemnet of counsel, until Tuesday, 17 May, at eleven o'clock in the forenoon.

A. D. McFADDIN,
Special Master.

17 May, 1910.

88½ COLUMBIA, S. C., 18 *May*, 1910.

Pursuant to agreement of counsel a reference herein was this day held herein.

Present: The Attorneys of Record.

Mr. Abney offers in evidence a statement of amounts due the Carolina Glass Company by certain County Dispensaries, signed by W. B. West, Auditor.

Received in evidence as Exhibit C.

Mr. Abney offers in evidence a statement of the amounts paid by various County Dispensaries to the Carolina Glass Company since November 20, 1909, signed by W. B. West, Auditor.

Received in evidence as Exhibit D.

Mr. Abney thereupon announced that the defendants clost.

Mr. Lyles announced that the plaintiff cloased.

A. D. McFADDIN,
Special Master.

18 May, 1910.

89 EXHIBIT A.

The following is the testimony of Mr. Lyles to which Mr. Abney objected for the reasons stated on page 13 of the testimony, taken on this separate sheet at the request of Mr. Abney:

I did not regard the judgment of the Dispensary Commission as worth the paper it was written on, and felt no hesitation in advising my clients that so far as that was concerned that they need apprehend no interference in the collection of their moneys, but I realized that the County Dispensary Boards could not pay over moneys until the claims had been approved, especially in what Mr. Abney refers to as dry counties by the State Dispensary Auditor, and I knew that he was subject to the orders of the Governor, and the order which the Governor had issued with reference to regular claims convinced me that if called upon he would issue such an order as to the Carolina Glass Company.

I never once supposed that there was any reason why the Carolina Glass Company should not collect its money, if the County Dispensary Boards were ready to pay it.

90 EXHIBIT C.

Statement of Amounts Due the Carolina Glass Company by the Following County Dispensary Boards.

County.	Amount due Nov. 20, 1909.	Amount due 23 Feb., 1910.	Amount due 26 Feb. 1910.	Sales from 20 Nov., 1909, to 26 Feb., 1910.
Ruchland	3,363.21	$4,963.13	$4,963.13	$6,373.28
Orangeburg	$1,399.51			
Abbeville	572.81			
Kershaw	926.90			
Fairfield	998.13			
Clarendon	96.47	96.47	96.47	
Bamberg	801.07			
Colleton	470.38			
Barnwell	323.19			
Georgetown	44.51	660.68	660.68	660.68
Beaufort				559.40
Sumter	386.12			
Laurens	1,039.84			
Aiken	.....	727.95	727.95	4,319.08
Total	$10,420.14	$6,448.23	$6,448.23	$11,912.44

NOTE.—There were no sales made between Feb. 23 and Feb. 26.

Respectfully submitted,

W. B. WEST, *Auditor.*

91 EXHIBIT D.

County.	Date.	Amount.
Abbeville	Dec. 3, ...	$572.81
Bamberg	Dec. 1, ...	801.07
Barnwell	Dec. 1, ...	323.19
Colleton	Dec. 1, ...	470.38
Fairfield	Jan. 8, 1910.....	996.13
Kershaw	Dec. 1, ...	926.90
Laurens	Jan. 11, 1910.....	1,039.84
Sumter	Dec. 31, ...	386.12
Williamsburg	.....	
Orangeburg	Dec. 13, ...	1,399.51
Berkeley	Oct. 19, ...	54.00

W. B. WEST, *Auditor.*

92 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910, In the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY et al., Defendants.

Master's Report.

To the Supreme Court of the State of South Carolina:

I, the undersigned A. D. McFaddin, Special Master, have to report:

1. Pursuant to an order of reference herein dated and filed 2 May, 1910, and signed by Hon. Ira B. Jones, Chief Justice, wherein it was referred to the undersigned "to take the testimony upon such questions of fact as arise upon the Complaint and affidavits, annexed thereto and the Returns and Answers of the defendants and report the facts to this Court on or before the 19th of the present month," I held two references herein, attended by the co-nsel of record, took the testimony offered, which is herewith reported, and therefrom find as follows, to wit:

2. I find that after the introduction into the General Assembly of the bill which passed under the title of "An Act to Further Provide for Winding up the Affairs of the State Dispensary," approved the 23rd day of February, 1910, the bill was referred to the Senate Committee on Police Regulations, and then that Committee had it up for consideration, its messenger, the Clerk of the Committee, was sent to Mr. Lyles, who was before another Committee of the General Assembly, and he was informed that the bill was
93 up for consideration, and that the Committee would be pleased to hear from him if he had anything to say in opposition to the bill. Mr. Lyles went before the Committee, and found there, the Attorney General, the author of the bill, Mr. Washington Clark, and Mr. Townsend, the Clerk of the Committee, together with several members of the Committee.

Mr. Lyles was informed of the fact that the bill was up for consideration, and was asked if he had anything to say on the subject. He replied that he had seen the bill, and that his only interest in the subject was as a representative of the Carolina Glass Company. That he, however, did not suppose that the bill was intended to affect the claim of the Carolina Glass Company at all, which was then under appeal to the Supreme Court. The Attorney General replied to the effect that Mr. Lyles was correct in his supposition that the bill would not affect the claim of the Carolina Glass Company; thereupon, Mr. Lyles announced that he had nothing further to say on the subject, and withdrew.

3. The main issue raised in the testimony related to the circumstances under which the letter of Mr. W. F. Stevenson of November

20, 1909, to Mr. William H. Lyles, set out in the Complaint was written. On the 20th day of November, 1909, Mr. John T. Seibels and Mr. William H. Lyles, as Attorneys for the Carolina Glass Company, having seen in the daily papers a statement to the effect that the Governor had ordered certain County Dispensary Boards to hold up the payment of funds due to certain liquor houses, at the request of the Carolina Glass Company called upon his Excellency, the Governor and the Attorney General to ascertain whether any order had been issued directing the said County Dispensary Boards, or any of them, to hold up the sums due and to become due to the Carolina Glass Company. They were informed by the Governor and the Attorney General that no special conference had been had with reference to that Company, and were referred to Mr. W. F. Stevenson as the special counsel having charge of the matter.

94 4. During the same day Mr. William H. Lyles put in a call over the long distance telephone for Mr. Stevenson, then at Cheraw, and before getting in communication with him, wrote the letter, a copy of which is attached to the return of Mr. Stevenson in this case.

After the writing of this letter, a conversation over the long distance telephone was held between Mr. Lyles and Mr. Stevenson, and there seems to be some misunderstanding between the parties as to the effect of this conversation. Mr. Lyles testifies that it was in reference to future shipments entirely, and that there was no agreement or understanding as to the amounts already due by the County Dispensaries to the Carolina Glass Company, and I find as matter of fact that no positive agreement was reached over the telephone, but that the agreement that was made is embodied in the letter of Mr. Lyles to Mr. Stevenson (the substance of which was communicated to him over the telephone) and the reply of Mr. Stevenson thereto (said reply having been written before the receipt of Mr. Lyles's letter), said letter having been promptly received by Mr. Lyles, and became the basis of his action in the matter in controversy.

5. Mr. Stevenson contends that he wrote the letter on the understanding that the bills already due were not to be disturbed until further conference, and that as a result the State's Attorneys acting under that arrangement did not begin proceedings to sequester those funds on behalf of the State. He says he wrote the letter in good faith on that understanding and produces a letter written to his associates, accompanying a copy of the letter to Mr. Lyles, and mailed at once stating that that was the understanding, and that if that was not what Mr. Lyles had agreed upon, there had been no agreement between them and the letter was written under a misapprehension such as might occur over a telephone, and I find as above indi-

95 cated that the minds of the parties did not meet in this conversation.

6. I find that on the 20th day of November, 1909, at the time of the correspondence and conversation above referred to, there was due to the Carolina Glass Company by several of the County Dispensaries the sum of $10,420.14, as set out in Exhibit B hereto attached, and that since said date several of the Counties have paid

to the Carolina Glass Company various sums aggregating the sum of $6,915.95, as set out in Exhibit C hereto attached.

All of which is respectfully submitted,

A. D. McFADDIN,
Special Master.

19 May, 1910.

96 *Defendant's Exceptions to Master's Report.*

The defendants except — the report of the Master herein upon the following grounds:

1. The Master erred in finding and holding that the Attorney General, at the hearing upon the bill in question before the Senate committee, assented to the view expressed by Mr. Lyles as attorney for plaintiff that the bill was not intended to affect the claim of the Carolina Glass Company at all. It is respectfully submitted that the overwhelming testimony shows that at said hearing before the Senate Committee the Attorney General expressed the opinion that the bill would not affect the appeal of the Carolina Glass Company then pending in the Supreme Court.

2. The Master erred in finding and holding that there was no agreement entered into by and between Mr. Lyles as attorney for the plaintiff, and Mr. Stevenson as attorney for the State Dispensary Commission. It is respectfully submitted that he should have found from the testimony that an agreement was entered into by and between said attorneys whereby it was stipulated and understood that the Carolina Glass Company should not collect or in any wise disturb the funds then due it by the several county dispensary boards in consideration of the promise of Mr. Stevenson, not to interfere with monies which might thereafter become due and payable by county dispensary boards for glass ware thereafter to be sold to such boards by plaintiff.

3. The Master erred in failing to find that the status of the funds in the hands of the several county dispensary boards due the Carolina Glass Company on the 20th day of November, 1909 should not be disturbed was a consideration of the letter and a part of the agreement between Mr. Lyles and Mr. Stevenson, and that the Glass Company should not have collected the same without a further
97 & 98 conference with Mr. Stevenson.

[Endorsed:] State of South Carolina. In the Supreme Court, April Term, 1909. Before the State Dispensary Commission. In the matter of the claim of Carolina Glass Co., vs. State Dispensary Commission. Exceptions to Master's Report. Copy.

99 7724.

CAROLINA GLASS CO.
v.
STATE OF SOUTH CAROLINA.

CAROLINA GLASS CO.
v.
STATE DISPENSARY COMMISSION.

1. State Dispensary Commission.—Statement by a member of a commission authorized to pass on an account against the State to Counsel in the beginning of the argument, that his impression from reading the evidence was that the claimant owed the State and he wished to hear argument on that point, does not show the commissioner was prejudiced against appellant's claim.

2. Ibid.—Judgment.—Under the statute creating the dispensary commission, it has the power to ascertain the amount due the State by a claimant, and in arriving at that conclusion it could ascertain if the claimant is due the State anything and state the difference as the result of its finding, although such finding would not have the force and effect of a judgment by a Court.

3. Evidence.—Under the charge of conspiracy to defraud the State, testimony that claimant had sold glass to others in smaller quantities for less than it sold to the State, and that lower bids had been rejected by officers of the State, is competent and relevant.

4. State Dispensary Commission — Constitutional Law.—The Legislature has the power to confer on the State dispensary commission authority to collect from the county dispensaries any funds in their hands due parties who are indebted to the State by reason of transactions with the State dispensary, and the Courts have no power to interfere.

5. Ibid.—Ibid.—The Legislature has no power under the Constitution to authorize a commission to pass final judgment on the claim of the State against a citizen, and so much of the act of 1910, 26 Stat., 876, as authorizes the State dispensary commission to make such judgment, is unconstitutional and void, and so also is so
100 much of the act as attempts to create a lien by such judgment on the property of the citizen.

6. Rehearing refused.

Appeal by the Carolina Glass Co. to This Court from the Decision of the State Dispensary Commission and Action for Injunction by Same Corporation Against the State Dispensary Commission.

J. Fraser Lyon, Attorney General; B. L. Abney, W. F. Stevenson and Anderson, Felder, Rountree & Wilson, heard together here.

The decision from which the appeal is taken is:

"STATE OF SOUTH CAROLINA,
County of Richland:

"In the Matter of the Claim of THE CAROLINA GLASS COMPANY AGAINST THE STATE DISPENSARY OF SOUTH CAROLINA.

"The foregoing matter having come on for a hearing before this Commission, and evidence having been taken for and against the claim made by said Carolina Glass Company against the State Dispensary, and after hearing the argument of the counsel representing said claimant and counsel representing the interests of the State.

"This Commission, exercising its powers under and by virtue of an Act of the General Assembly of the State of South Carolina approved February, 1907, and Acts amendatory thereto, find as follows:

First. "That the Carolina Glass Company was organized during the summer of 1902 in pursuance of an agreement which had been made between its promoters and certain members of the Board of Directors of the South Carolina State Dispensary whereby it was intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary should be made exclusively to the Carolina Glass Company; and that said officers and promoters of the said Carolina Glass Company and said Board of Directors
101 or some of them entered into a conspiracy to defraud the State of South Carolina by preventing and defeating all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition.

Second. "That in pursuance of this understanding and agreement the said Carolina Glass Company bid (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent. in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company, with whom the State Dispensary then had a contract, a large part of which was still unfilled; and notwithstanding this fact and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices; that on or about December 3, 1902, the said Carolina Glass Company entered into an agreement with said Flaccus & Company under and by virtue of which the Carolina Glass Company purchased the contract of said Flaccus & Company and agreed to assume its full and complete performance, and also by the terms of said contract purchased from said Flaccus & Company the special moulds needed to manufacture the special bottles required under the rules of the Board of Directors of the State Dispensary and other material used in connection with their manufacture and packing; that the Board of Directors of the State Dispensary thereupon ratified the transfer of this contract from Flaccus & Company to the Carolina Glass Company and there was at the time the same was purchased twenty-two cars of glass still to be delivered under its terms; that thereafter said Carolina Glass Company did not deliver any glass

whatever to the State Dispensary as being manufactured under the terms of the Flaccus contract, nor at the price named in the Flaccus contract, but continued to manufacture glass under the award which has been made to it under its bid filed in September, 1912,
102 until in March, 1903, another award was made by said Board of Directors of the South Carolina Dispensary to said Carolina Glass Company at substantially the same prices, although at that time its own contract made in September, 1902, had not been fully executed and no part of the remaining cars of glass called for under the Flaccus contract had been manufactured or delivered, and notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary for much lower prices and for goods of just as good quality, the said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company, which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary.

Third. "That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price (though for goods equal in quality) than those proposed at the same time by the Carolina Glass Company, and that some of the bids were suppressed by said Board of Directors, with the consent of the Carolina Glass Company, so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the
103 said Carolina Glass Company and purchases made from it at the higher prices named in their bids.

Fourth. "That after December 3, 1902, and until the early part of the year 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary; that after the year 1902, and during the remainder of the period above named said Carolina Glass Company secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair

market price for the goods sold. Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, whether the goods were then needed or not, and notwithstanding that said Glass Company had never filled said Flaccus contract until, at the time of the passage of the concurrent resolution by the two Houses of the General Assembly of South Carolina in 1906 canceling the unfilled portions of existing contracts, there were outstanding contracts at exorbitant prices under which there remained to be filled orders for more than two hundred cars of glass bottles of the approximate value of more than $200,000; by which action on the part of the General Assembly, according to the testimony of one of the officers of said Glass Company, the State saved more than $50,000, when comparison is made with the prices paid for goods subsequently purchased.

104 Fifth. "That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent. below the prices at which the same goods were being sold to the State of South Carolina; the agent of said Carolina Glass Company admitting in his evidence before this Commission that the purchase of the Flaccus contract was made for the purpose of getting rid of a competitor, and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina.

"We therefore find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever; but the Commission further finds that it should determine the matter on equitable principles and fix the matter of liability on a 'quantum meruit' basis and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906 and 1907 at about ten per cent. above the fair and reasonable market price for said goods. The Commission finds that the total amount of sales, after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions

105 with the State Dispensary up to the time it was abolished, was $613,437. Of this amount the sum of $99,108 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated $514,329.90.

"The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was $51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to wit, its claim for $23,013.75, which, being deducted from the amount of said overcharges, the Commission finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of $28,419.24.

"Whereupon judgment is rendered in accordance with the foregoing findings."

Messrs. D. W. Robinson and W. H. Lyles for plaintiff in first stated case. Mr. Robinson cites: Special tribunals are strictly confined to powers granted: 1 Bail. 460; 12 S. C. 214; 112 U. S. 306; 8 How. 449; 6 Wheat. 127; 1 Hill 53; 1 McClover 16; 49 Cal. 525; 5 Rand. 636; 66 U. S. 488; 85 C. C. A. 38; 1 Strob. 1; 6 Wheat.
127; 79 S. C. 320. Under the Constitution all judicial power
106 is vested in the Courts: 79 S. C. 334; 213 U. S. 172; 73 U. S.
247. What is the Dispensary Commission? 12 S. C. 111; 12 S. C. 244. Alleged overcharge is not a counterclaim: 34 Cyc. 626, 625, 623, 642, 643; 37 S. C. 593; 19 Cyc. P. & P. 726; 1 McC. 491. Notice or pleading of counterclaim is necessary: 15 S. C. 461; Pom. on Rem. 660. The plaintiff is deprieved of due process of law: 18 How. 272; 110 U. S. 516; 111 U. S. 701; 129 U. S. 114; 92 U. S. 480. Right of State to sue: 19 Cyc. 726-7; 40 Am. Dec. 373; 41 Am. Dec. 549; 43 N. E. 226; 10 Minn. 39; 106 U. S. 196; 103 U. S. 168. Vested rights and obligation of contracts are impaired by Commission setting up counterclaim: 96 U. S. 595; 13 Rich. 279; 6 How. 327; 83 U. S. 203. Trial by jury is refused: 106 U. S. 412; 11 How. 447; 131 U. S. 32; 8 Wheat. 25. Statute of 1910 is not retrospective and could not operate on plaintiff's claim: 34 S. C. 477; 191 U. S. 552.

Messrs. Lyles & Lyles, Jno. T. Seibels and D. W. Robinson, for plaintiff in second stated case, cite: The Court will apply constitutional provisions to the facts without specific pleading: 12 Ency. P. & P. 1; 16 Cyc. 889; 1 Cranch. 137; 75 U. S. 44; 54 S. C. 1; 63 S. C. 169. The acts of 1907 and 1908 invested the Commision with no authority to consider claims by the State against any person: 25 Stat. 835; 79 S. C. 316; 213 U. S. 151; 59 U. S. 272; 142 U. S. 660; 188 U. S. 505; 213 U. S. 171; 34 Cyc. 625, 626, 642, 643; 37 S. C. 593; 19 Cyc. P. & P. 726; 1 McC. 491; 1 Bail. 121. The act of 1910 violates Sec. 1 of Art. V of the Constitution, because it invests the Commission with jurisdiction to consider claims by the State against

an individual or corporation: 59 S. C. 110; 21 S. C. 560; 1 Cranch. 137; 36 L. R. A. 824; 2 Shars. Black. 24; 12 S. C. 111; 16 S. C. 244; 17 S. C. 80; 11 Fed. Cas. 5872; 14 Fed. 177; 36 L. R. A. 824;
59 U. S. 272; 23 Ency. 485; 48 Am. Dec. 339; 13 Am. Dec.
107 615; 47 L. R. A. 631; 2 Hill (N. Y.) 159; 40 Am. Dec. 378;
41 Am. Dec. 549; 43 N. E. 226; 10 Minn. 39; 103 U. S. 168. This act also violates those provisions of the Constitution requiring the three branches of government to be kept separate: 103 U. S. 168; 98 Fed. 335; 54 S. C. 1; 18 How. 272; 15 L. Ed. 377; 98 Fed. 346; 26 L. Ed. 387. It also violates the due process and equal protection clauses of the State and Federal Constitutions: 15 L. Ed. 376; 110 U. S. 516; 111 U. S. 701; 187 U. S. 51; 129 U. S. 114; 92 U. S. 480; 139 U. S. 462; 134 U. S. 418; 169 U. S. 466; 98 Fed. 335; 5 Johns. 477; 66 S. C. 194; 72 S. C. 9. The act is also an arbitrary discrimination: 63 S. C. 169; 66 S. C. 37; 166 U. S. 150; 75 S. C. 62; 207 U. S. 20. To apply to plaintiff's claim the act must be held retroactive, which cannot be gathered from its terms: 34 S. C. 477; 55 S. C. 302; 60 S. C. 70; 18 S. C. 481; 22 S. C. 504; 54 S. C. 251; 116 N. W. 98; 89 S. W. 399; 106 N. W. 566; End. on Int. of Stat. 271; 129 U. S. 36; 52 S. E. 821; 112 U. S. 536; 191 U. S. 552. If retrospective, the act is void: 13 Rich. 279; 34 S. C. 477; 22 S. C. 504; 9 S. C. 293; 18 S. E. 704. It impairs obligation of contracts: 96 U. S. 595; 6 How. 327; 4 L. R. A. N. S. 1077; 8 Wheat. 92; 2 How. 612; 30 S. C. 381; 75 S. C. 34; 18 S. E. 704; 3 L. R. A. N. S. 954; 147 Mich. 493; 83 U. S. 203; 9 Fed. Stat. Ann. 337. It takes away trial by jury: 106 U. S. 412; 11 How. 447; 131 U. S. 32; 8 Wheat. 28. It takes away right of appeal: 81 S. C. 534; 131 U. S. 22; Con. Art. V, Sec. 4; 207 U. S. 35. A Legislative act cannot affect judicial proceedings already pending, especially where judgment has been rendered: 26 S. E. 592; 18 S. E. 704; 12 Am. St. R. 352; 8 Fed. Stat. Ann. 849-50; 44 Ala. 418; 1 L. R. A. 530. If the letter of Mr. Stevenson is not a contract it is an estoppel of the State to collect amounts due plaintiff from county dispensaries: 100 U. S. 578; 11 How. 325; 39 S. C. 435; 72 S. C. 47; 32 S. C. 511;
27 S. C. 232; 10 Wal. 604; 96 U. S. 716; 17 Wall. 32.

108 Messrs. J. Fraser Lyon, Attorney General; B. L. Abney, W. F. Stevenson and Anderson, Felder, Rountree & Wilson, contra, cite, in the first named case: The powers and duties of the Commission: 25 Stat. 835, 1289; 79 S. C. 316; 12 S. C. 111. If the agent of the State makes a secret agreement with the vendor against the interest of the State, the vendor will not be permitted to recover; 113 N. Y. S. 737; 129 U. S. 643; 119 Fed. 279; 46 Pac. 123; 71 N. E. 916; 174 U. S. 639; 24 N. E. 661. Contracts against public policy and contrary to statute as to consideration or thing to be done are void; 21 Wall. 441; 2 Wall. 45. The State is never estopped by the unauthorized acts of its officers; 60 S. C. 465. Nor is it estopped from recovering sums of money obtained from its officers in fraud: 41 So. 575; 117 La. 286.

The opinion in this case was filed November 17th, but held up on petition for rehearing until

NOVEMBER 29, 1910.

The opinion of the Court was delivered by Mr. Justice HYDRICK:

The above stated cases were heard and will be considered together, as the second grows in part out of the first. At the session of 1905, a committee of the legislature was appointed, under a concurrent resolution, to investigate the affairs of the State Dispensary, 24 Stat., 1220. The resolution was very broad in its scope, and authorized the committee, among other things, to investigate all transactions connected with the dispensary and its management, present and past, and the connection of any of its officers with any corporation, concern or individual, contracting for the sale of goods to the State for the dispensary, and ascertain the financial standing of the business.

The investigations of the committee resulted in an act, passed in 1907, authorizing the appointment of a commission, to be known as the State Dispensary Commission, whose duty it was to
109 close out the entire business and property of the State Dispensary, collect all debts due, and pay "all just liabilities" of the State growing out of said business. The Commission was given "full power and authority to investigate the past conduct of the affairs of the dispensary." It was also clothed with all the power and authority conferred upon the committee, which had been appointed under the resolution above referred to. 25 Stat., 835. The act of 1907 was amended in 1908 so as to give the Commission "full power to pass upon, fix and determine all claims against the State growing out of dealings with the dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other." 25 Stat., 1289.

Appellant presented to the Commission a claim for $23,013.75, as the balance due it by the State for bottles and demijohns furnished to the dispensary under contracts made with the Board of Directors from and including April, 1906, until the business was closed out by the Commission. Appellant had also furnished the dispensary practically all the bottles and demijohns used since about December, 1902; but all accounts prior to April, 1906, had been settled.

Upon the filing of this claim, the Commission went into an investigation of all past dealings of appellant with the dispensary; and after hearing a great deal of testimony and argument thereon, rendered its decision, dated November 17, 1909, which will be set out in the report of the case.

The conclusion and finding of the Commission was that, in pursuance of a conspiracy between some of the directors of the dispensary and some of the appellant's officers or agents to defraud the State whereby legitimate competition was destroyed, appellant had a monopoly of the business of furnishing glass to the dispensary from the date of its beginning business, in 1902, until April, 1906; and that the prices paid it for glass during that period ex-
110 ceeded the fair market value thereof by $51,432.99. Therefore, allowing appellant's claim of $23,013.75, the Commission found that appellant was indebted to the State in the sum of

$28,419.24, the difference between the amount of its claim and the sum it had fraudulently collected from the State.

From that decision this appeal was taken, under the provisions of the statute, giving every claimant the right of appeal to the Supreme Court, "as in cases at law." Appellant concedes that the jurisdiction of this Court is limited in such cases to a review of alleged errors of law. Many of the exceptions question the findings of fact on the ground that there is no testimony to support them. If that were so, they might be corrected as errors of law. But, after a very careful consideration of the testimony, we have failed to discover that any of the findings of fact are wholly unsupported by testimony. It would unnecessarily prolong this opinion to discuss in detail the evidence, which covers 650 printed pages, to point out that which tends to support the findings of the Commission, which are material to its decision. It would be an unprofitable task. Besides, any expression or opinion by this Court upon the sufficiency of the evidence upon any point might result in prejudice to others whose rights may be affected by the same testimony and facts inferable therefrom in other litigation which may grow out of the transactions in question. In this connection, it may not be out of place to say that we do not agree with appellant's counsel that the finding of the Commission of a conspiracy to defraud the State is an impeachment of the character for honesty and integrity of every stockholder, director and officer of the Company. Corporations, like individuals, are bound by the acts of their agents within the scope of their authority, even those fraudulently done; and while the legal consequences of such acts must be visited upon the principals, it by no means follows that the principals can justly be charged with guilty participation in them. It is but fair to say that there is not a particle of testi-
111 mony tending to show that some of the stockholders, directors and officers of the company had any knowledge of the transactions which fell under the condemnation of the Commission.

The first exception alleging error of law is that after the testimony had been taken, and the argument was about to commence, one of the commissioners stated to appellant's attorney that, from his recollection and knowledge of the testimony, there was a doubt in his mind whether the State owed appellant anything; that he was under the impression, from the testimony, that it showed that appellant owed the State a large sum of money on account of overcharges; and asked that his argument be directed to that point. It is contended that this statement showed that the mind of the commissioner was prejudiced against appellant's claim, and that he was thereby disqualified to participate in the deliberations of the Commission. Such a contention is clearly untenable. The Commissioner distinctly stated that the impression made upon his mind was from reading the testimony. Ordinarily, the mind of every intelligent man is impressed one way or the other as to the weight of evidence and its sufficiency to establish the facts in issue as he hears or reads it. There is no impropriety in the trier of facts stating to counsel the impressions so made upon his mind, that he may have the opportunity of so presenting the evidence as to remove the impression, if

possible. It is common practice for Judges to state to counsel the bent of their minds as to the law or facts, so as to direct argument to the questions involved, and we have never heard the practice questioned or condemned. On the contrary, it is a distinct advantage to counsel in arguing a cause.

The next contention of appellant is that the Commission is not a Court, but a special tribunal of limited power, and that it ex-
112 ceeded its authority in undertaking to fix and determine appellant's liability to the State, and then set off its claim against the liability so fixed. It is conceded that the Commission is not a Court, though its duties necessarily involve, to some extent, the exercise of judicial functions, as is always the case where judgment and discretion are to be exercised. It was created under Section 2 of Article XVII of the Constitution, which provides that "the General Assembly may direct by law in what manner claims against the State may be established and adjusted." State v. Dispensary Commission, 79 S. C. 316, 60 S. E. 928. Of a like nature was the "Court of Claims," created under a similar provision of the Constitution of 1868. Ex parte Childs, 12 S. C. 11. This being so, the Commission is limited to the exercise of such powers as are expressly conferred upon it by the statutes, and such as are necessarily implied from those conferred. This is true even of Courts of special and limited jurisdiction. McKensie v. Ramsey, 1 Bail. 460. It is contended that authority "to pass upon, fix and determine all claims against the State" does not include authority to fix and determine claims in favor of the State against others. Such a construction of the statutes is too narrow, and unwarranted from their manifest purpose and intent. The Commission was authorized and directed to determine what were the "just claims" against the State growing out of the business, and to that end it was directed to investigate all transactions with the dispensary, past and present. For what purpose? Evidently to enable it to decide what were the just liabilities of the State. And how could it decide what was the just liability of the State to a claimant without ascertaining what was the just liability of the claimant to the State growing out of his dealings with the dispensary? The determination of the one necessarily involved the other.

The question, therefore, whether the Commission had authority to entertain a "set off" or "counterclaim" in favor of the
113 State against a claimant, in the technical sense in which those terms are used in legal proceedings is not germane or material to the present inquiry. To what purpose should the Commission investigate, unless it announced the result of its investigation? We see no error, therefore, in the Commission stating its findings as the result of its investigation.

The findings of the Commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper Court to recover the amount found by the Commission to be due it by appellant.

The exceptions assigning error in admitting in evidence certain testimony which had been taken by the investigating committee, appointed under the resolution hereinbefore referred to, cannot be sustained; because the record fails to show that objection was made to its introduction; on the contrary, it appears that it was introduced by consent. Besides, appellant was represented by counsel before the committee and cross-examined the witnesses, except one, whose affidavit was admitted without objection; and after the testimony was admitted, the Commission offered appellant opportunity to introduce testimony in rebuttal or to impeach the witnesses.

The next assignment of error is in admitting testimony to show that other manufacturers of glass had put in bids with the directors of the dispensary which were lower than the bids of appellant, which were accepted by the directors; and that appellant had, during the time it was furnishing the dispensary, sold bottles of the same kind to other buyers in smaller quantities at lower prices, because in dealing with the other buyers it had to meet competition, the contention being that appellant's bids having been accepted and contracts
114 awarded upon them, such testimony was irrelevant. The testimony was clearly relevant, because it tended to prove the charge of a conspiracy to defraud the State. If it be true, as contended, and as some of appellant's witnesses testified, that these smaller quantities were sold at lower prices merely to get rid of its remnants or surplus product, which was a very small per cent. of its output, that was a fact for the consideration of the Commission in determining the weight and sufficiency of the evidence, but it could not affect its relevancy.

We proceed next to dispose of the issues raised in the second case stated at the head of this opinion. These arise principally out of an act approved February 23, 1910, and what was done by the defendants under the provisions of that act, which, it will be noted, was passed subsequent to the decision of the Commission upon the claim of the plaintiff. The provisons of the first five sections of the act pertinent to this case are, in substance: That, in addition to the powers conferred by all previous acts, the Dispensary Commission shall have power to pass upon, fix and determine claims of the State against any person, firm or corporation heretofore doing business with the State Dispensary, and settle and receipt therefor; that the findings of the Commission under its provisions shall be final, and, upon the finding by the Commission that any person, firm or corporation is indebted to the State, the dispensary auditor and officials having charge of the funds of any county dispensary which may be indebted to such person, firm or corporation, shall pay to the Commission the amount so found to be due the State, or so much thereof as the funds in their hands due to such person, firm or corporation will pay, and the receipt of the Commission shall be a sufficient voucher therefor; that the Commission may, by its order, stop the paying out of any funds of any county dispensary by any officer having charge thereof. Sections 7 and 9 of the act are as follows:

115 SEC. 7. "The State Dispensary Commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this State, and a transcript of said judgment shall be filed in the office of the clerk of the Court of Common Pleas in each county where any property of such judgment debtor is situated.

SEC. 9. "In all cases pending before the said State Dispensary Commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any county in this State, the said Commission shall file in the office of the clerk of Court in each county where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said Commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State."

Within a few days after the approval of the act, to wit, on February 26, 1910, the Commission, by its attorneys, filed in the office of the clerk of the Court for Richland county, in which county plaintiff owned real estate, a notice, headed or entitled, The State v. Carolina Glass Co., and signed by the Attorney General and other counsel representing the State. The notice was as follows: "Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State Dispensary Commission for the recovery against the Carolina Glass Company of $29,000.00, the amount which has been found
116 to be due from the said defendant to the State of South Carolina owing to overcharges made by said defendant in selling goods to the State Dispensary, and this notice is given in accordance with the terms of an act of the legislature passed in February, 1910, and duly approved by the Governor." About the same time, notice was served on the plaintiff, pursuant to the provisions of the act, that the Commission would proceed to pass upon, fix and determine the claim of the State against the plaintiff on account of the overcharges growing out of its dealings with the dispensary. Notice was also served on the County Dispensary Board of Richland county, requiring that board to pay to the Commission the amount due by said board to the plaintiff.

Another feature of the case grows out of an agreement alleged to have been made between the attorneys for the plaintiff and the attorney representing the State with regard to payments for shipments of glass made by plaintiff to the county dispensaries after November 20, 1909. At the date of the decision of the Commission on plaintiff's claim, several of the county dispensaries were indebted to plaintiff for glass shipped prior to the decision, and plaintiff was under

contract to make further shipments. But fearing that payment of the amounts due it by the county dispensaries might be stopped by order of the Commission, and being unwilling, in view of the possibility of such action, to make further shipments, without an agreement that payment therefor would not be withheld, the attorney representing the State in the matter of claims against the plaintiff and others for overcharges against the dispensary, agreed with plaintiff's attorney that payments for all shipments made after November 20th would not be interfered with by the Commission. There seems to have been some misunderstanding between the attorneys as to what the agreement was, or as to whether there was any agreement, with regard to the amounts then due the plaintiff for shipments
117 previously made. No steps, however, were taken by the Commission or the State's attorneys to stop the payment of such debts, and plaintiff continued to collect them, as well as those accruing after November 20th.

Upon the filing and serving of the notices above mentioned, this action was commenced in the original jurisdiction of this Court, to enjoin the defendants from ordering the sums due to plaintiff by the county dispensaries withheld or paid over to the Commission, on the ground that the act of the Commission in fixing and determining the liability of plaintiff to the State was an excess of authority conferred by the statutes, and, therefore, null and void, and on the ground that the notice requiring the county board to pay to the Commission the amounts due by it to plaintiff, in so far as it affected shipments made subsequent to November 20th, was a violation of the agreement with plaintiff's attorneys. Plaintiff also asks that the Commission be enjoined from asserting or claiming a lien upon its real estate in favor of the State by virtue of the notice filed with the clerk of Court for Richland county, on the ground that the sections of the act giving the State such lien upon the judgment of the Commission, or the right to acquire it by reason of such judgment, are unconstitutional.

Under the provisions of the Constitution (Art. VIII, Sec. 11) and statutes (25 Stat., 463) the county dispensaries are conducted "under the authority and in the name of the State." Therefore, the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold to them are the debts of the State. In exercising the powers conferred upon it by the legislature, the Dispensary Commission is also the agent and representative of the State, "subject to no interference, except that of the General Assembly itself," and a suit brought against it is, in effect, a suit against the State. State v. Dispensary Commission, 79 S. C. 316, 329, 60 S. E. 928. As the State cannot be sued without its
118 consent, no Court has power to interfere with or direct the disposition of the State's funds in the hands of its agents, unless it appears that they are acting without authority of law, or are refusing to recognize and obey the law to the detriment of private rights. In State v. Dispensary Commission, supra, at page 325, this Court said: "The General Assembly may require the public

funds, or any part of them, to be put in any place or with any person it sees fit; and there is no limit to its power in imposing conditions and conferring discretion on its fiscal agent as to the disbursements of these funds to its creditors. When a discretion is conferred by the State, no Court can supplant the agent of the State and substitute for his discretion its own judgment." In ordering the funds in the hands of the officers of the county dispensaries due to the plaintiff turned over to itself, the Commission acted within the limits of its authority and discretion conferred upon it by the Legislature, and this Court has no power to interfere. From the foregoing, it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collection of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The Dispensary Commission is the sole arbiter of the rights of the plaintiff, if it has any, with regard to that matter.

The claim that the State has a lien upon the real estate of the plaintiff by virtue of the provisions of Section 7, and by virtue of the notice filed with the clerk of Court under the provisions of Section 9 of the act of 1910, presents a serious and delicate question. Unless the provisions of Section 7 must be construed to be retroactive, the lien cannot be claimed under this section. The rule is too well settled to require discussion that a statute will not be con-
119 strued so as to have retroactive effect, unless such construction is required by its express terms, or by a necessary implication. There are no words in the act expressly giving any of its provisions retroactive effect, and there is no necessary implication from the language used that the Legislature intended that it should have such effect. Therefore, when the Legislature said, in Section 7, that "all judgments rendered by them (the Commission) for any claim due the State shall be a lien on the property of the judgment debtor situated within the State," it meant all judgments rendered after the passage of the act. As the only judgment, in any sense of the word, rendered by the Commission against the plaintiff was rendered before the passage of the act, no lien upon the property of the plaintiff was given or intended to be given by virtue of that judgment.

The Constitution ordains (Art. I, Sec. 14) that "the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." This language is as strong as it is simple and clear. The Legislature therefore cannot assume to itself the exercise of judicial powers. Seegers v. Parrott, 54 S. C. 1. Nor can it confer "judicial powers," in the sense in which those words are used in the Constitution, upon any other body than the Courts mentioned and provided for in Section 1, Article V, of the Constitution, which provides that "the judicial power of this State shall be vested in" the Courts therein specifically mentioned and provided for. The few instances in which judicial power is vested

elsewhere are provided for in the Constitution itself, and with these few exceptions, the whole of the element of sovereignty known as judicial power was vested by the people in their Courts, and none of it was left to be lodged elsewhere. In fact, every person ex-
120 ercising the functions of either of the other departments of the government are forbidden to assume or discharge those vested in the Courts. We have already seen that the Dispensary Commission is not a Court within the meaning of the judicial article of the Constitution, but is a special tribunal, created under the power of the Legislature to investigate the financial affairs of the State, and that provision of the Constitution which authorizes the Legislature to direct by law how claims against the State shall be established and adjusted.

It follows that any attempt to confer upon the Commission judicial powers, except in so far as the exercise of such powers may be necessarily incident to the duty of investigating and ascertaining the truth with respect to the management of the dispensary, and the just liabilities of the State growing out of dealings with the dispensary, is violative of the Constitution. The exercise of judicial functions, or quasi judicial functions, is often necessary, as an incident, to the exercise of the powers conferred by the Constitution upon the other co-ordinate branches of the government, as in all cases where the exercise of judgment and discretion are required. But this is not the judicial power vested in the Courts. It would be difficult to give an exact definition of the words "judicial power" as used in the Constitution, which would be applicable to all cases which might arise, and we shall not attempt it. The lines of demarcation between the powers of the three departments of government are often shadowy and illusive; but in the main they are clear, well defined and well understood.

The Constitution assumed the existence of an organized society, and when it vested the judicial power in the Courts, it had reference to the judicial power then existing, and such as the people then understood to be vested in and exercised by the Courts.

There can be no doubt or difficulty therefore as to those powers, which, from the earliest periods in the history of our constitutional forms of government, have been exercised by the Courts in
121 the due and orderly interpretation and administration of the law. It has always and universally been deemed the prerogative of the Courts to enforce and protect rights, prevent and redress wrongs, punish offenses against the public, and determine the rights, obligations and liabilities of persons arising out of their relations to and dealings with each other. It would not be contended for a moment that the Legislature could, even upon the fullest, fairest and most deliberate investigation, after due notice, pass a valid act declaring that a particular individual is indebted to the State in a given amount, and by legislative fiat create a lien upon his property. Such an act would not only be an unwarranted usurpation of judicial power, but would also be an infringement of the constitutional guaranty that no person shall be deprived of his property without due process of law or be denied the equal protection of the law. If, then, the Legislature itself could not pass such a judgment, it cannot

confer upon a commission the power to do so. The creature cannot be greater than the creator. The investigation of the dealings between the plaintiff and the State, the hearing of evidence and argument upon the facts and the law applicable thereto, and the determination of the rights of the plaintiff and the State growing thereout are so clearly an exercise of judicial power that the bare statement of the proposition is sufficient without argument to illustrate its truth. It was held to be such by this Court in State v. Dispensary Commission, supra, where, at page 333, the Court said: "Their (the Commission's) discretion is a judicial discretion, and their action, without respect to the validity of claims, judicial action." So long, therefore, as the action of the Commission was confined to the investigation of all dealings, past and present, with the dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the Constitution for the Legislature to provide by law how claims of the State against others shall be established or adjusted, except through the Courts. We conclude, therefore, that in so far as the act of 1910 attempts to confer upon the Commission power to pass final judgment upon the claim of the State against the plaintiff, it is unconstitutional, null and void. And, as the lien which the act attempts to create is based upon the unauthorized act of the Commission, it is likewise null and void.

122

The judgment of this Court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, and that the defendants be enjoined from asserting or claiming any lien upon plaintiff's property under or by virtue of the notice filed in the office of the clerk of Court for Richmond county, and that said notice be cancelled of record.

NOVEMBER 29, 1910.

Per Curiam:

On consideration thereof, the within petition is dismissed.

123 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
against
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY Patton and J. S. Brice, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants.

Petition.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the State of South Carolina:

The petition of Carolina Glass Company would respectfully represent:

That your petitioner is advised, by its Counsel, that the Decree which this Honorable Court has made, upon its application for an Injunction to restrain the Defendants above named from in any manner demanding or receiving the sums of money due to your Petitioner by the several County Dispensaries, or any of them, and from in any manner interfering with the payment of any such sum, or sums due by the said Dispensaries to your Petitioner, has in effect establish- that your Petitioner has no relief against the Defendant above named to prevent such interference upon the theory that the funds of the said several county Dispensaries are funds of the State of South Carolina and that the State of South Carolina has a right to order the change of the custody of such funds and the disposition thereof as it may deem proper. Your Honors will see,

124 from an examination of the pleadings in this cause, that it is an admitted fact that the several amounts stated were due from the respective County Dispensary Boards to your Petitioner at the time of commencing this action.

And your Petitioner is advised, by its counsel, that this Honorable Court seems to have overlooked the effect of the construction which it has placed, in this case, upon the Act of 1910 in holding that the so-called "overjudgment" rendered by the State Dispensary Commission was null and void. And your Petitioner would, therefore, respectfully urge upon this Honorable Court a re-consideration of the case and a re-hearing thereof, in order that your Petitioner may, by its Counsel, present your Petitioner's views of the Act of 1910, as your Petitioner feels that grave injustice has been done to it, in that funds which this Court has decided that the State of South Carolina has no claim upon have been withdrawn from the custody of the County Dispensary Boards and put beyond the reach of your Petitioner.

Your Petitioner would call your attention to the Act entitled "An Act to declare the law in reference to and to regulate the manufacture, sale, use, consumption, possession, transportation and disposition of alcoholic liquors and beverages within the State, and to police the same," approved the 16th day of February, 1907, under which the several County Dispensaries have been established and are operated. And your Petitioner would especially call your attention to the fact that the schemes of the said Act was to make the funds and business of each one of the said several County Dispensaries itself a separate and distinct fund, and to segregate each particular fund from the other funds of the State of South Carolina, and to make such particular fund responsible for the obligations incurred in reference thereto.

Your Petitioner would respectfully refer to Section 6 of the said Act, which reads as follows:

125 "The members of the said County Dispensary Board are hereby declared to be County officers, and are hereby authorized and empowered, under the authority and in the name of this State, to buy in any market and retail within the State, liquors and beverages as provided herein: Provided, That the State shall not be liable upon any contract for the purchase thereof beyond the actual assets of the Dispensary for which the purchase is made. The mem-

bers of the County Dispensary Board and all Dispensers shall be persons of known moral character and not directly or indirectly applicants for appointment."

Your Petitioner would also call your attention to Section 9 of the said Act, which provides as follows:

"The County Dispensary Board shall, during the first week of each month, make a sworn statement of the receipts, expenditures and liabilities of each Dispensary for the proceeding month, and cause the same to be published once in some newspaper published in the County during the week."

Your Petitioner would also call your attention to the first sentence of Section 18, which reads as follows:

"On the first days of January, April, July and October in every year, the County Dispensary Board shall file with the Clerk of Court a sworn statement of the profits of each Dispensary in the County for the three months preceding said dates, respectively, which shall be recorded by him in a book kept for that purpose, and published forthwith by said Board once in a newspaper published within the County."

And your Petitioner would also call your attention to Section 11 of the said Act, which reads as follows:

"Each Dispenser shall daily deposit, to the credit of the County Board, in a bank designated by the Board, all moneys received by him from sales."

And your Petitioner would respectfully submit that it is apparent by the said Sections, that no part of the funds of the said
126 County Dispensaries could be in any manner diverted or appropriated for any purpose whatever, except for the purpose of *stai*sfying the debts incurred for the purchase of said stock and for the payment of the necessary running expenses of tne said County Dispensaries, until after the debts and expenses so incurred had been paid and *stai*sfied.

It will be seen that the State of South Carolina did not assume any general liability for the purchase of goods under the authority of this Act or in anywise pledge its general credit for the payment thereof, but did enter into a contract with those who might sell goods to the said several county Dispensary Boards, that the funds of each and every of the said County Dispensary Boards should be a trust fund, set apart and administered under the terms of the said Act, for the extinguishment, first, of all liabilities that might be incurred for the purchase of stock or merchandise thereunder, and then only for distribution according to the terms of the said act. And your Petitioner respectfully submits that the custody of said funds provide*s* for in said Act *because* itself a part and parcel of the contract entered into between the State of South Carolina and the Seller of merchandise under the said Act.

And your Petitioner submits that, even if the State of South Carolina had intended, by the Act of 1910, to withdraw the funds so to be set aside from the control of the several County Dispensary Boards, she would have had no right to do so, as her action in that regard would have been in violation of Section 10 of Article I, of

the Constitution of the United States, and also in violation of the Fourteenth Amendment of the Constitution of the United States, as well as of Section 5 and 8 of Article I of the Constitution of the State of South Carolina.

Your Petitioner, however, would respectfully urge upon this court that the Act of 1910 was based upon the theory—and only upon the theory—that the State Dispensary Commissioners were au-
127 thorized and empowered, in addition to the powers theretofore conferred upon them to pass upon, fix and determine any and all claims of the State against any and all persons, firms or corporations theretofore doing business with the State Dispensary, and to render judgments thereon. And the said Act of 1910 did not in any respect, or in any particular, authorize or empower the State Dispensary Commissioners to interfere with the funds of the several county Dispensary Boards due by them to the persons from whom goods had been purchased, except for the purpose of appropriating the same towards the judgments so found by the said State Dispensary Commission.

And your Petitioner would respectfully submit that this Court, having adjudged that the State Dispensary Commissioners had no jurisdiction to find an overjudgment against your Petitioner or to inquire further as to any obligation of your Petitioner to the State of South Carolina, except in so far as it was necessary to extinguish the claim of your Petitioner against the State, which had been submitted to the said State Dispensary Commissioners and which had been extinguished by their judgment several months prior to their proceedings complained of in this action, and prior even to the passage of the Act of 1910, that the said State Dispensary Commissioners were stripped of all excuse or reason for interfering with the funds so due to your Petitioner as aforesaid; and there was no authority in law for them, in their official capacity, to interfere in any such manner as they have done. And your Petitioner submits that their interference was simply a transgression of your Petitioner's rights and a violation of their official duty, for while they, and each of them, are, jointly and severally liable to your Petitioner under the Constitution and laws of the State of South Carolina and of the United States.

And your petitioner would respectfully call your attention to Paragraph Ten of your Petitioner's complaint in this action, in which it is alleged that the said Defendants were undertaking to proceed under Section 6 of the Act approved in February, 1910, aforesaid, in serving upon the several County Dispensaries
128 mentioned in said paragraph Ten, notices to pay over the funds; and it is admitted in Paragraphs Four and Five of the Answer of Defendants that they were claiming to proceed under the authority of Section 6 of the Act of 1910, they setting up the so-called judgment against your Petitioner in favor of the State of South Carolina as justification of their otherwise unlawful acts.

This being the sole authority—either by general right of the State of South Carolina or by special authority under the Act of 1910—if they were not authorized by Section 6 of said Act, then it is clear

that their action was entirely without authority and could not be justified under color of their several offices.

Section 6 of said Act provides as follows:

"In any and all cases where the State Dispensary Commission has heretofore found any amounts due the State by any persons, firm or corporation on account of dealings with the State Dispensary, the several County Dispensary Boards now existing, and all boards and other officer or officers in charge of any money due any such person, firm or corporation on account of any dealings with any and all county dispensaries heretofore existing, shall, upon demand, pay to the State Dispensary Commission a sufficient amount, or so much thereof as may be on hand, to cover the amount so found to be due the State."

Under the decision of this Court in this case upon the appeal of your Petitioner on its claim against the State of South Carolina, this Court has in express terms ruled that the State Dispensary Commissioners had not had authority to render the judgment in question, and that the Act in question could not confer such authority.

Being therefore without justification or excuse for the interference which they have made with the funds of your Petitioner, it is respectfully submitted that the Decree in this case should have gone on and enjoined and restrained them from continuing to interfere therewith, as the action of the Commissioners complained of by your Petitioner without color of law, would be confiscation pure and simple.

——— ———,
——— ———,
Attorneys for Petitioner.

129 COLUMBIA, S. C., *November* —, 1910.

STATE OF SOUTH CAROLINA,
Richland County:

Carolina Glass Company, Petitioner above named, by its President, does hereby consent that, if the stay of the remittitur shall be granted, and a re-hearing of the Petition above named shall be granted, it shall be upon condition that the status of the property involved in the case shall not be disturbed until the final determination of the case.

Dated this — day of November, 1910.

——— ———.

STATE OF SOUTH CAROLINA,
Richland County:

I, ——— ———, an attorney at law and counselor practicing in the Supreme Court of the State of South Carolina, do hereby certify that I am not concerned in the prosecution of said cause, or in anywise interested therein, and that, in my opinion, there is merit in the grounds stated for a rehearing in said cause.

Dated this — day of November, 1910.

Properly certified, signed and sworn to.

——— ———.

Nov. 29, 1910.

Per Curiam:

On consideration thereof, the within petition is dismissed.

130 *Authentication of Record.*

SUPREME COURT,
State of South Carolina, ss:

I, U. R. Brooks, clerk of said court, do hereby certify that the foregoing pages, numbered from 1 to 129, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of Carolina Glass Company, Plaintiff, versus W. J. Murray, et al. Defendants, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Columbia, S. C., this fourth day of December, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

131 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, in the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Roundtree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Roundtree and Wilson, Defendants.

Assignment of Errors.

Now comes the Carolina Glass Company and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignments:

First. That the Supreme Court of South Carolina erred in holding and deciding that the State Dispensary Commission acted within the limits of the authority and discretion conferred upon it by the Legislature, in ordering the funds in the hands of the County Dispensaries due to plaintiff turned over to itself, and that the said action of the said Commission did not impair the obligation of plain-

tiff's contract with the State and deprive plaintiff of its prop-
132 erty without due process of law and deny plaintiff the equal protection of the laws, in violation of Section ten of Article I and Section one of the fourteenth Amendment of the Constitution of the United States.

Second. That the Supreme Court of South Carolina erred in holding and deciding that it was unnecessary to inquire whether there was any agreement between the attorneys for plaintiff and the attorneys for the State of South Carolina as to the collection of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it had been violated and that the Dispensary Commission was the sole arbiter of plaintiff's rights, if it had any, with regard to the matter, when plaintiff asserted and claimed protection from such contract rights under Section ten of Article I of the Constitution of the United States.

Third. That the Supreme Court of South —— erred in holding and deciding that there was not a legally and morally binding contract between plaintiff and the State of South Carolina, and the defendants as agents and representatives of said State, concerning the shipments and deliveries to be made and actually made by plaintiff to the county dispensaries, in which palintiff was protected by Section ten of Article I of the Construction of the United States.

Fourth. Because the Supreme Court of South Carolina should have held and decided that the action of the defendants taken pursuant to the Act of February 23rd, 1910, entitled—"An Act to Further Provide for Winding up the Affairs of the State Dispensary,"—
in ordering and requiring the county dispensaries to pay
133 over to defendants the funds due plaintiff and the title to which was at least in equity and good conscience in plaintiff, was unconstitutional, null and void, because in violation of Section ten of Article I and Section one of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Because the Supreme Court of South Carolina should have held and decided that the Act approved February 23rd, 1910, entitled—"An Act to Further Provide for winding up the Affairs of the State Dispensary,"—was unconstitutional, null and void, in so far as it authorized, required or permitted defendants to receive, take or confiscate the funds in the hands of the county dispensaries due and owing to plaintiff, and at least in equity and good conscience the property of plaintiff, because the same impaired the obligation of plaintiff's contract with the State, deprived plaintiff of its property without due process of law and denied to plaintiff the equal protection of the laws, in violation of the Constitution of the United States.

For which errors the plaintiff, Carolina Glass Company, prays that the judgment of the Supreme Court of South Carolina herein, dated November 29th, 1910, be reversed in so far as the same refused to perpetually enjoin and restrain the defendants, and each and every of them, from in any manner demanding or receiving the said sums, or any of them, alleged to be due by the several

county dispensaries named in the complaint to this plaintiff, or from in any manner interfering with the payment of any such sum or sums by the said county dispensaries to this plaintiff, and that said judgment be reversed in so far as the same refused plaintiff's
134 prayer for such other and further relief as was just and proper, and that judgment be rendered in favor of plaintiff enjoining the defendants, and each and every of them as prayed from said Supreme Court of South Carolina, and for such other and further relief as may be just and equitable, and for costs.

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff.

Columbia, S. C., November 6th, 1912.

134½ [Endorsed:] The State of South Carolina. In the Supreme Court, in the Original Jurisdiction. Carolina Glass Company, Plaintiff, vs. W. J. Murray et al., Defendants. Assignment of Errors. Lyles & Lyles, Attorneys for Plaintiff. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

135 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, in the Original Jurisdiction.

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Roundtree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Roundtree & Wilson, Defendants.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the plaintiff hereby prays a writ of error, from the said decision and judgment, to the Supreme Court of the United States, and an order fixing the amount of a costs bond.

Assignment of errors herewith.

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Plaintiff.

STATE OF SOUTH CAROLINA,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by
136 the Carolina Glass Company to the defendants above named, in the sum of two hundred and fifty dollars.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

November 8, 1912.

136½ [Endorsed:] The State of South Carolina. In the Supreme Court, in the Original Jurisdiction. Carolina Glass Company, Plaintiff, vs. W. J. Murray et al., Defendant-. Petition for writ of error. Lyles & Lyles, Attorneys for Plaintiff. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

137 CAROLINA GLASS COMPANY, Plaintiff in Error,

vs.

W. J. MURRAY, Chairman; JOHN MCSWEEN, A. N. WOOD, AVERY PATTON, and J. S. BRICE, Constituting the State Dispensary Commission; J. Fraser Lyon, Attorney-General of the State of South Carolina; W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree, and Chas. G. Wilson, Constituting the Firm of Anderson, Felder, Rountree & Wilson, Defendants in Error.

Bond.

Know All Men by these Presents, That we, Carolina Glass Company, as principal, and John J. Seibels and B. F. Taylor, as sureties, are held and firmly bound unto W. J. Murray, Chairman, John McSween, A. N. Wood, Avery Patton and J. S. Brice, constituting the State Dispensary Commission, J. Fraser Lyon, Attorney-General of the State of South Carolina, W. F. Stevenson, B. L. Abney, and Clifford L. Anderson, James L. Anderson, Thos. B. Felder, Jr., Daniel W. Rountree and Chas. G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, in the sum of Two Hundred and Fifty Dollars, to be paid to said parties, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this sixth day of November, 1912.

Whereas, the above-named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of South Carolina.

Now, Therefore, The condition of this obligation is such, that if the above-named plaintiff in error shall prosecute its said
138 writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then

this obligation to be void, otherwise to remain in full force and effect.

CAROLINA GLASS COMPANY,
By JOHN J. SEIBELS, *Its President.*
JOHN J. SEIBELS.
B. F. TAYLOR.

STATE OF SOUTH CAROLINA,
Richland County, ss:

John J. Seibels and B. F. Taylor, being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of South Carolina, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Two Hundred and Fifty Dollars over and above all debts, liabilities and exemptions.

JOHN J. SEIBELS.
B. F. TAYLOR.

Subscribed to and sworn to before me this November 6th, 1912.
EDWARD L. CRAIG, [SEAL.]
Notary Public for South Carolina.

Bond approved this 8th day of November, 1912.
EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

138½ [Endorsed:] Carolina Glass Company, as Principal, John J. Seibels and B. F. Taylor, as Sureties, to W. J. Murray et als. Surety bond. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

139 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

[Seal United States District Court, Eastern Dist. S. C.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the Carolina Glass Company, and William J. Murray, Chairman; John McSween, Adolphus N. Wood, Avery Patton, James S. Brice, constituting the State Dispensary Commission; James Fraser Lyon, Attorney-General of the State of South Carolina; William F. Stevenson, Benjamin L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree and Charles

G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Carolina Glass Company, as by its com-
140 plaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the Sixth day of November, in the year of our Lord one thousand nine hundred and twelve.

[Seal United States District Court, Eastern Dist. S. C.]

RICHARD W. WILSON,
Clerk District Court United States,
District of South Carolina.

Allowed November 8, 1912.
EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

140½ [Endorsed:] Supreme Court of the United States. In the Matter of the Claim of Carolina Glass Company, Plaintiff in Error, against W. J. Murray, et al., Defendants in Error. Writ of error. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

141 *Certificate of Lodgment.*

SUPREME COURT,
State of South Carolina, ss:

I, U. R. Brooks, clerk of the said Court, do hereby certify that there was lodged with me as such clerk on November 14, 1912, in the matter of Carolina Glass Company, versus W. J. Murray, et al.:

1. The original bond of which a copy is herein set forth.
2. Fourteen copies of the writ of error as herein set forth, one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at my office in Columbia, S. C., this fourth day of December, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

142 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to William J. Murray, Chairman; John McSween, Adolphus N. Wood, Avery Patton, and James S. Brice, constituting the State Dispensary Commission; James Fraser Lyon, Attorney-General of the State of South Carolina; William F. Stevenson, Benjamin L. Abney, and Clifford L. Anderson, James L. Anderson, Thomas B. Felder, Jr., Daniel W. Rountree, and Charles G. Wilson, constituting the firm of Anderson, Felder, Rountree & Wilson, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of South Carolina, wherein the Carolina Glass Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of South Carolina, this 8th day of November, 1912.

[Seal Supreme Court of South Carolina.]

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

Attest:
U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Service acknowledged this 15th day of November, 1912.
J. FRASER LYON,
Attorney General,
Attorney of Record for Defendants in Error.

142½ [Endorsed:] Supreme Court of the United States. In the Matter of the Claim of Carolina Glass Company, Plaintiff in Error, against W. J. Murray et al. Defendants in Error. Citation. Lyles & Lyles, Attorneys for Carolina Glass Company. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

143 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of South Carolina, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of South Carolina, in the City of Columbia, this fourth day of December, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Costs of Suit.

Plaintiff's costs $35.00, paid by Carolina Glass Company.
Defendants' costs —.
Costs of Transcript, $15.00, paid by Carolina Glass Company.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 23,448. South Carolina Supreme Court. Term No. 391. Carolina Glass Company, plaintiff in error, vs. William J. Murray, chairman; John McSween et al., constituting the State Dispensary Commission, et al. Filed December 7th, 1912. File No. 23,448.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1915

No. [redacted]12

THE CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED DECEMBER 30, 1912.

(23,476)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 408.

THE CAROLINA GLASS COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 27, 1914.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910.

Before the State Dispensary Commission.

In the Matter of the Claim of

CAROLINA GLASS COMPANY
against
STATE OF SOUTH CAROLINA.

Case for Appeal.

John T. Siebels, Esq., D. W. Robinson, Esq., Messrs. Lyles & Lyles, Attorneys for Carolina Glass Co.
Hon. J. Fraser Lyon, Attorney-General.
Messrs. Anderson, Felder, Rountree & Wilson, Attorneys for State of South Carolina.

The above entitled claim came before the State Dispensary Commission upon a claim filed by the Carolina Glass Company in 1907, in the sum of $23,013.75, the balance due to said company by the State of South Carolina on account of glass bottles, demijohns, etc., sold and delivered to the Board of Directors of the State Dispensary under awards made by the said Board of Directors in April, 1906, subsequently.

The matter came up for consideration before the Commission and evidence was submitted from time to time, To wit: on the 14th day of February, 1908, and on the 17th and 18th day- of June, 1909, when the following proceedings were had.

FEBRUARY 14TH, 1908.

In re THE CAROLINA GLASS COMPANY.

This case was called for hearing before the Commission, Mr. John J. Seibels, Mr. Thomas Taylor, Mr. C. A. Norton and Mr. B.
2 F. Taylor, representing the Carolina Glass Company appeared before the Commission.

C. A. NORTON, being duly sworn, testified:

Examined by Mr. FELDER:

Q. How long have you been in the business of manufacturing glass?
A. Ten years last August.
Q. You commenced where?
A. Tallapoosa, Ga.

Mr. Felder here introduces the testimony of C. A. Norton and Geo. K. Packham, taken before the committee appointed to investigate the Dispensary in Columbia from Feb. 7th to 15th, inclusive, 1906, from pages 155 to 305, inclusive, as published in pamphlet form:

The Commission reassembled Thursday, June 17, at 3.30. The first case called:

The Carolina Glass Company.

General ANDERSON: This case heretofore, in the examination of witnesses, has been conducted by my partner, Colonel Felder, but as he has been working very hard he has asked me to take this claim this afternoon. I see from the evidence taken, that there is little, if any more, to be produced, but in order that there may be no misunderstanding as to the evidence before taken, and before you now, I wish to call your attention to the fact that when some certain witnesses were examined in this case, relative to the investigations made by the Commission, the testimony which was taken before the Legislative Investigating Committee — 1906 was introduced as evidence, and I understand it to be evidence introduced at this time.

Mr. Lyles was present and there was no objection on his part.

Mr. W. H. Lyles, representing the claimant.

Mr. LYLES: We did not represent the Carolina Glass Com-
3 pany at the time of the last investigation, but did represent them at the time of the investigation by the Legislative Committee.

General ANDERSON: I observe from the report of the evidence taken before this Commission that Mr. Felder offered in evidence the testimony taken before the Legislative Committee, which was admitted at the time.

Mr. LYLES: We have no objection to its introduction. I simply said I was not present and did not represent them before this Commission.

General ANDERSON: I introduce in evidence the report of the American Audit Company, which is in pamphlet form and doubtless has been examined by Mr. Lyles, because it applies to the Carolina Glass Company. I wish it understood that the Commission has before it all the records and papers belonging to the late Dispensary, in their possession, for their consideration. I also offer as evidence to be considered in this matter, the report of Charles Hyley & Company, public accountants and auditors—April 4, 1908. Have you seen it Mr. Lyles?

Mr. LYLES: Dr. Murray was kind enough to furnish us with a copy of some of those reports, and we have no objection to any of them going in. We want of course to understand if you refer to anything especially, to know the reference.

General ANDERSON: This report which I offer in evidence relates exclusively to the Carolina Glass Company.

Mr. LYLES: I mean in the general reference you made a few moments ago to the books and documents of the old Dispensary, I

think in fairness to us that we should be informed as to anything special. We are ready and willing — anything brought against us, but want to know it specifically. We are satisfied that nothing can be brought against us we cannot answer. We think the report of the accountant offered is satisfactory.

4 General ANDERSON: I call attention to the account of the Carolina Glass Company as it appears in page 474 of Ledger "E" of the S. C. Dispensary, showing the opening of the account on September 30th, 1902, between the Dispensary and the Carolina Glass Company. I call attention to that in order that Mr. Lyles may know the reason for offering this; on account of the fact it appears from this page of the ledger of the dispensary advanced to the Carolina Glass Company the sum of $8,140.19 before receiving any shipment of goods from that company at all.

Mr. LYLES: We can show that is a mistake, show that the shipments had all been made.

Mr. BRICE: You will be given that opportunity.

It was subsequently discovered that the items referred to as debits against the Carolina Glass Company were really credits, and that there was nothing in the entries showing payments by the State of South Carolina to the Glass Company before the delivery of Glass.

General ANDERSON: Ledger "F." page 310, from which appears—upon which appears the account of the Carolina Glass Company, and upon that Ledger, which is the Ledger following—the one introduced—appears the shipments that were made, and the two Ledgers disclose that the first shipment was entered as having been received Dec. 1st, 1902, commencing on Sept. 30 to Nov. 22. In compliance with the suggestion made by Mr. Lyles that we should designate what books and papers we shall have reference to as being in the possession of the Commission, coming from the Dispensary, we will refer to the Minutes covering the period of time during which the transactions with the Carolina Glass Company took place, the books and invoices during the period of time they were shipping goods and bidding to the Dispensary I have all the ledgers here which

5 contain the account of the Carolina Glass Company. It is proper to offer the books as a whole, but usual to call attention to any particular matter. In the progress of any argument, I will especially refer to any matter in the books that may be material to the issue. It would be difficult for me to do so without making a detailed statement. You have an opportunity to reply to some of the arguments I will make in the case.

Mr. LYLES: The usual way to introduce these things, is to introduce your evidence.

Mr. BRICE: You introduce the books and bids to show what General Anderson?

General ANDERSON: The date when the first bid was made, the date when the first bid was awarded, the date of the several bids and awards which followed in each of the successive years after 1902 and until they ceased to do business with the State. The invoices showing the shipments made from time to time in compliance with the several bids made and accepted, and several communications which

appear in the Minutes relating to the Carolina Glass Company matter, one of them being a letter addressed to the Attorney-General of the State asking an opinion—addressed to him by the State Board of Directors——

Mr. LYLES: When was that?

General ANDERSON: I think it was in 1905, as I recall it. I notice in the Minutes a communication from the Commissioner to the Board relative to the amount of cases that should be contained in a car, and a subsequent communication of the Board to the Commissioner limiting the number of cases to be included in each car. That is all I recall.

Mr. LYLES: If that is all, we think those matters pertinent and probably we are acquainted with all those matters. It is certainly proper for the Commission to have all the light thrown upon
6 this matter possible by reference to any of the books of the Dispensary or our books. We have taken the position from the first——

General ANDERSON: Those bids, books and Minutes will also disclose that at the same time bids were made by the Carolina Glass Company, other bids were made by the other glass people, and we will put them in evidence for the purpose of comparing them.

Mr. LYLES: I was going to say, we have taken the position from the inception of this matter, before the Joint Committee appointed in 1906, that we have at stake not only the amount of money but the business integrity of this corporation, and the social and moral integrity of gentlemen who stand in the city of Columbia among the highest, and we can not afford, if we had wished to do so, to object to anything that will throw light. So it is not a question of the technical admissability of any matters of evidence. All we want it when anything is brought out, if necessary, we be given an oppo-tunity to show it, only want to make a complete showing to this Commission, as we have always made, that these transactions between this company and the Board of Directors have been entirely free from anything reprehensible.

Mr. BRICE: In the same connection, I would like to have this offered in evidence. The Legislature at its session, 1906, passed a resolution canceling all contracts the State made with the Carolina Glass Company.

General ANDERSON: That is matter of law, not required to be in evidence. That will conclude the evidence introduced for the State.

Mr. BRICE: Have you any witnesses?

General ANDERSON: The evidence of Mr. Brevard Miller and Mr. Packham is offered in evidence.

Mr. LYLES: We would like an opportunity to see these references.

7 General ANDERSON: In order that the record may be complete, I will state that we made every possible effort to get those two witnesses—Mr. Miller and Mr. Packham—they were without the borders of the State and unwilling to appear here at this time.

Mr. BRICE: Mr. Lyles, from my recollection and knowledge of

the testimony, there is certainly a doubt in my mind whether the State of South Carolina owes the Carolina Glass Company a cent. I am under the impression, from the testimony, that it will show that the Carolina Glass Company really owes the State a large sum of money. I want to hear you on that point; in other words, that from the fall of 1902, when they commenced doing business down here, their overcharges down here, compared with what the State if doing an honest business, buying glass from other people, would amount to several hundred thousand, and instead of the State owing them some $18,000.00, they owe the State $100,000. In developing your case, develop that point—it was published in Collier's Weekly. I got the testimony and read it up on that point, and it is based on the testimony of competent witnesses from other houses. I read your cross-examination and could not see where you shook the testimony of the fellow who said his house would have furnished $240,000 cheaper.

Mr. LYLES: You refer to the testimony of Mr. Packham?

Mr. BRICE: Yes; I do not mean to stop you, but desire to call your attention to what is in my mind.

Mr. LYLES: I want to state this at the beginning, that it is not strictly speaking in the nature of an argument. As to the merits of the case, in the first place we always contended and we took the trouble to send to Baltimore witnesses who hunted up Mr. Packham's record, and it will bear proof, that he was a man utterly unworthy of belief, a man whose testimony would not be taken as worth anything by those who know his record.

8 Mr. BRICE: Will you prove that?

Mr. LYLES: If you gentlemen please, this Commission is not exactly a Court of Record. You proceed I have no doubt as far as possible in accordance with the lines of procedure which have been considered the best to arrive at matters of truth in a Court of Record. Before the Investigating Committee we had a feeling that we were not treated fairly—I have no reference to Messrs. Lyon and Christensen, who were the principal leaders of that committee, except that they viewed it from a different standpoint, a standpoint that the committee was more in the nature of a grand jury, simply to look upon one side of a case, and whether or not there was any evidence which would tend to prove the charges made against us, and were prepared to show the truth of the charges with specific evidence, we were met with the statement the committee was in such a hurry the matter could not be considered. It was about the close of the session and we were put off in producing the testimony were were preparing to produce. Here is the finding of that grand jury (reads). This was the finding of the committee who had the testimony before them. There is expressed, indicated in that finding, nothing to indicate that the Committee ever were of the opinion there was any reasonable ground to charge this company with such a condition of things as the impression produced on your mind by this testimony.

Mr. BRICE: It is shown that you sold glass in small quantities cheaper.

Mr. LYLES: Any merchant who runs a department store does that

there in Columbia—Mr. J. L. Mimnaugh, who has a large store, sells remnants cheaper, it is customary. We have a statement showing the total amount of glass sold, at a lower figure than the Dispensary bought elsewhere.

Mr. BRICE: I only desired to tell you personally how I felt in the matter, that, instead of the State owing them they owe the State.

9 ATTORNEY-GENERAL: You referred, Mr. Lyles, to Mr. Packham, who did some valuable work, and whose truth and veracity impressed me as favorably as that of the witnesses of the Glass Company. I would like for you to give me some information as to such statement Mr. Packham made, made upon his own knowledge and information and corroborated by the evidence, as was false; you mentioned you could prove that they were false.

Mr. LYLES: I cannot remember now:

ATTORNEY-GENERAL: I want to challenge him at this point to show one single false statement Packham made.

Mr. LYLES: We admitted in the beginning there were some instances in which remnants of glass had been sold at lower rates than sold to the Dispensary. You must understand the glass business is somewhat peculiar in its character, when they start up in the fall—they ordinarily do not operate in the summer, it is so heating impossible to operate in the summer—when they start up in the fall they have to have the tank filled with molten glass, mixed in a certain way, and they have to work during the whole season, because if chilled, it is ruined, and they have to start all over again. As the heat of the summer approaches, it comes to a period when they have to keep enough of that molten glass on hand to fill all orders they have, and it is utterly impossible for them to tell exactly how much will be required. Sometimes the orders do not materialize, sometimes are canceled, and it always happens at the end of the season a remnant so to speak, of this molten glass is in the tank; either that has to be thrown away, or it is blown into something that might amount to something, and which they can dispose of as a remnant, just as any other manufa*cutere* would do as to remnants. It is impossible for a merchant to calculate so he will not have something left over. It is true business policy, and not fair to judge of the trade as the wholesale merchant and say he has charged to one par-

10 ticular valuable customer too much, simply because at the end of the season he sells remnants cheaper to anybody else. This was legitimate and proper to be done, and that was done in this instance.

Mr. PATTON: What time of the year?

Mr. LYLES: Any time of the year, for the reason when we cool down in June—of this year—if in operation it is about the season when we have been cooling down, they would manufacture into something for which they have no special order—it might lie there one or two years and sold for what it is worth.

(Hands copy of letter previously addressed to Dr. Murray—sort of a history of this matter.)

General ANDERSON: I think this matter will proceed more rapidly

and satisfactorily if Mr. Lyles will introduce his evidence and argue his case afterwards. I have no desire to criticize, but in making statement to the Commission, as to what may be, or not, supported by the evidence, he is not preceeding properly.

Mr. BRICE: Only such evidence as is offered now will be considered, as we have reopened the case.

General ANDERSON: I object to the letter of the Carolina Glass Company to the chairman of this Commission being introduced, that it be used as evidence.

ATTORNEY-GENERAL: I would also ask leave to object to this. We have had a great deal of "hot air" from this company about this matter, and this case is now open to testimony. If there are facts in that letter, that Mr. Seibels or anybody else knows, let them get up and swear to it. I think General Anderson and Mr. Lyles are amply able to explain to the Commission without reading the correspondence—there were letters published in the journal of the House and Senate from Lanahan and others—hereafter let them stand up and swear to what they know.

11 (Letter offered as evidence.)

Mr. LYLES: This matter has been subjected to the strictest investigation—submitted to the strictest examination by this Commission, it is true, not composed entirely of its present membership, but you are the same Commission in contemplation of law, as the Commission of which Dr. Murray has been Chairman now for some time. It was said that we may offer what evidence we have to offer about this matter. I want to know if it is the purpose of the Commission to disregard anything that has been done by this Commission heretofore?

Mr. BRICE: Just as if it had never completed the matter.

Mr. LYLES: I think that of course the audits which have been made of this matter by the Auditors appointed by the Commission are certainly admissable in evidence. Some of them orginally introduced—American Audit Company and Hyley & Company, introduced by the State, therefore they are before the Commission for consideration.

Mr. BRICE: They are evidence.

Mr. LYLES: We find that by those audits the accounts of The Carolina Glass Company—the audits made by the American Audit Co.—that it has been found to be the correct amount—a variation of $303.00 perhaps which was possibly caused by the books being submitted, the accounts, to the Dispensary Bookkeeper,—the old Dispensary Board itself, making a mistake in crediting one item which should have been a debit—putting it on the wrong side of the account—the American Audit Co., in auditing the account found that error, and by making that correction it made a difference of $303.00, and when Hyley made the audit it started out with that correction. We stand by the account and are perfectly willing to accept the accounting. The accounting has been most rigid. Referring to this item here, the impression made upon that Investigating Committee was that glass had been sold to the Dispensary without written contract.

12 You will observe each of these shipments is checked by the (auditor). I will ask you to look at it.

Mr. BRICE: In evidence already.

General ANDERSON: The paper I have is supplemental to that Mr. Hyley—of Mr. Hyley, I offer both in evidence.

Mr. LYLES: We have both the original and supplement. We understand and agree to it. What we do not understand, however, is the wish of the Commission for us to go through our books and prove item by item something proved and set down by the Auditor.

General ANDERSON: We conceded the audit is correct so far as the books disclose.

Mr. LYLES: That then facilitates matters.

I hardly know how to proceed in the matter. The original and supplemental report of Mr. Hyley are in evidence. The State admits the correctness of the audit according to the books. This audit also show- as you will see that the prices charged conform to the prices of the written contract—here for instance, is the first item of Exhibit "A" (Reads) Nov. 29, 1903, charged in the invoice of that date, $96.33. According to the contract the award there should have been $96.69, a difference of 30 cts. That audit has proceeded on that basis throughout, so if this evidence is admitted to be correct according to the books, then by this audit we prove every item of our account to be correctly made, with the exception of the various checks which are put down here by the auditor because this purports to be, and is, a checking of the invoices by the awards July, 1903, amounts, prices and shipments, commencing October 27th, under that award. It seems to me, starting out with the assumption that this is correct, then there is nothing for us to show, nothing further we could show, or anybody require further, as to the correctness of our invoices or our charges, as tallying with the awards which have been made to the Company for bottles.

13 General ANDERSON: We concede that those awards prove the accounting so far as the books show and a compliance with the contract show-, and we have assumed the burden to show that the State had certain offsets or counterclaims which will reduce it.

Mr. LYLES: I think it fair and proper, that you tell us what those offsets are.

General ANDERSON: We will put in the testimony to show that in our opening, ready to argue now, if you say so.

Mr. LYLES: We want it put in, we do not want to fight on any technicalities, but we want you to meet us in the spirit in which we have come here. We do not want any snap judgment on us, and we think bringing it down to a fair issue as possible, it is for him to tell us what he thinks he has as an offset, because his admission establishes the validity of our account, unless he has something to offset it.

Mr. BRICE: I presume he has reference, specially, to Packham's testimony.

General ANDERSON: Norton's, Seibel's, Packham's, Brevard Miller's and all the other testimony—and I will call attention to the fact that Mr. Lyles was present and cross-examined those witnesses, and he should be familiar with the testimony. I was not

present and all the knowledge I had was by a careful reading of the testimony taken in his presence. He has had it in his possession for some years, and if not prepared to answer the testimony taken at that time, I will ask the Commission to hear me argue the case.

Mr. BRICE: As a member of this Court, I want information. Packham and Norton both stated their houses offered to sell the State Dispensary glass at a certain price.

Mr. LYLES: You are mistaken as to Norton, he was manager of the Carolina Glass Company.

Mr. BRICE: Packham then. and he mentioned another house that made bids. That this Board of Control instead of awarding
14 bids to that house, which was a responsible house, awarded them to the Carolina Glass Company, thereby loosing in one instance $240,000 and in another $50,000. I can not believe the State owes them; in other words, the relations which existed between the Company and the Board of Directors were very close. I do not want to be prejudiced against them. I only think it right to tell you what i believe is the testimony on that point.

Mr. LYLES: I do not believe that you as a Commissioner, would be prejudiced against them. I can see how you feel as to wanting testimony on that point. We are not prepared to offer it, however, on that point this afternoon, as to whether Packham ever could have made any bid. We certainly do know that the Carolina Glasss Company has never been conscious of getting any contracts that they are not entitled to and they paid strict attention to the law, and had the strictest idea of justice and fairness in dealing with the State. In every instance they put their bids in in accordance with law, and when awarded a contract they have fulfilled it to the letter of the law; that is shown by the audit, very slight if any variation, which would occur in any large dealings, but they have never been conscious, and I do not know at this moment how it would be possible for us to meet the idea which seems to have existence in your mind. We submit with great deference, respect and honor for every gentleman who constitutes this Commission, that to meet the idea or impression which may have been lodged in your minds, as your chairman says, by reading of Collier's Magazine.

Mr. BRICE: It was the testimony I referred to. I read the testimony to see if it sustained what appeared in that paper and it did.

Mr. LYLES: We submit that these matters are to be considered by the testimony of this case, and we submit, that the matters we shod and that you show, will be passed upon when you pass upon this matter.

15 Mr. BRICE: Do you wish to offer testimony to rebut the testimony heretofore taken in this cause, to show these people did not overcharge the State.

Mr. LYLES: We are not prepared to do it this afternoon.

Mr. BRICE: You stated you had no oppo-tunity to show Packham's testimony was false; do you wish that oppo-tunity?

Mr. LYLES: We have one witness here. This matter has surprised us. We had no idea that after the matter had been settled

by the Commission, and the Senate's investigation, we are surprised it is again brought into question.

Mr. J. C. NORTON, duly sworn:

Examined by Mr. LYLES:

Q. What is your position?
A. Cashier and salesman of the Carolina Glass Company.
Q. What is your age?
A. 31.

16 General ANDERSON: The State has no further testimony.

Mr. BRICE: It is proposed that you go into argument now. I wish, however, to state to you gentlemen that while you may do so, if there is any additional testimony it all will be offered, as Mr. Patton is examining the books of this company and there are certain references which he may wish to offer when his examination is completed.

Mr. PATTON: Are the books of this Company all turned over to the Commission?

Mr. LYLES: Upon the call of the Commission we turned over to it all the books of the Company and they in turn were given to the American Audit Company by the Commission, and after that Hyley & Company, and after the books had been out of our possession—we think in the possession of the Attorney-General—(Attorney-General: I will state they were never in my possession) they were then sent back to us by Dr. Murray, chairman of the Commission. (Dr. Murray: You are mistaken Mr. Lyles as to that.)

Mr. PATTON: The Commission has never made an examination of the books.

ATTORNEY-GENERAL: My recollection is the books were at the disposal of the Commission, how long I can not say.

Mr. LYLES: We state they were at your disposal—at the disposal of the Commission—in the hands of some one representing the Commission, after that audit had been made, and it was announced the Commission was through with the books and they were taken charge of by Mr. Seibels, and carried to the Glass Works, and the older books were stored in a building used in connection with the demijohn business, and the books were stored there. Before the opening, the question arose as to the reopening of this claim. A passing engine on the A. C. L. R. R. set fire to the building occupied by the Read Company and burned up those old books, with the exception of the books we have here to-day, and they are all the books the company now owns. The Company was in no wise re-

17 sponsible for the burning, and very sorry it happened. However we can produce pro-ff as to the price of every sale, as the card system was in use then and the prices are all there and we will be glad to furnish any information asked for.

General ANDERSON: I am willing to go into the argument of the case, with the reservation if any further testimony is offered in the future, that both sides may offer it if they desire.

Mr. LYLES: That is satisfactory, provided that if it is reopened we have notice of it. However before we go into argument would like to ask Mr. Brewer a few questions.

The following evidence was taken by the Legislative Investigating Committee in 1906 was offered in evidence, and was admitted and considered by the Commission:

The attorney General stated to Mr. Lyles that there was no testimony of any kind before the Commission tending to discredit the testimony of G. K. Packham, and if he desired to impeach the witness he would have the privilege of offering any evidence in that respect. That this *event* evidence would also be offered on the part of the State for the purpose of discrediting the testimony of one of claimant's witness-.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

18–19 EXHIBIT F.

Judgment.

The said State Dispensary Commission thereafter filed the following judgment:

STATE OF SOUTH CAROLINA,
County of Richland:

In the Matter of the Claim of the CAROLINA GLASS COMPANY Against the State Dispensary of South Carolina.

The foregoing matter having come on for a hearing before this Commission, and evidence having been taken for and against the claim made by said Carolina Glass Company against the State Dispensary, and after hearing the argument of the counsel representing said claimant and counsel representing the interests of the State:

This Commission, exercising its powers under and by virtue of an Act of the General Assembly of the State of South Carolina approved February, 1907, and Acts amendatory thereto, find as follows:

First. That the Carolina Glass Company was organized during the summer of 1902 in pursuance of an agreement which had been made between its promoters and certain members of the Board of Directors of the South Carolina State Dispensary whereby it was intended that the said Carolina Glass Company should manu-
20 facture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary should be made exclusively to the Carolina Glass Company; and that said officers and promoters of the said Carolina Glass Company and said Board of Directors or some of them entered into a conspiracy to defraud the

State of South Carolina by preventing and defeating all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition.

Second. That in pursuance of this understanding and agreement the said Carolina Glass Company bid (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company, with whom the State Dispensary then had a contract, a large part of which was still unfilled; and notwithstanding this fact and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices; that on or about December 3, 1902, the said Carolina Glass Company entered into an agreement with said Flaccus & Company under and by virtue of which the Carolina Glass Company purchased the contract of said Flaccus & Company and agreed to assume its full and complete performance, and also by the terms of said contract purchased from said Flaccus & Company the special moulds needed to manufacture the special bottles required under the rules of the Board of Directors of the State Dispensary and other material used in connection with their manufacture and packing; that the Board of Directors of the State Dispensary thereupon ratified the transfer of this contract from Flaccus & Company to the Carolina Glass Company and there was at
21 the time the same was purchased twenty-two cars of glass still to be delivered under its terms; that thereafter said Carolina Glass Company did not deliver any glass whatever to the State Dispensary as being manufactured under the terms of the Flaccus contract, nor at the price named in the Flaccus contract, but continued to manufacture glass under the award which has been made to it under its bid filed in September, 1902, until in March, 1903, another award was made by said Board of Directors of the South Carolina Dispensary to said Carolina Glass Company at substantially the same prices, although at that time its own contract made in September, 1902, had not been fully executed and no part of the remaining cars of glass called for under the Flaccus contract had been manufactured or delivered, and notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary for much lower prices and for goods of just as good quality, the said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company, which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary.

Third. That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary and other bidders filed bids besides the Carolina
22 Glass Company, all of which were lower in price, (though for goods equal in quality) than those proposed at the same time by the Carolina Glass Company, and that some of said bids were suppressed by said Board of Directors, with the consent of the Carolina Glass Company so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the said Carolina Glass Company and purchases made from it at the higher prices named in their bids.

Fourth. That after December 3, 1902, and until the early part of the year 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary; that after the year 1902, and during the remainder of the period above named said Carolina Glass Company secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair market prices for the goods sold. Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbitant prices, whether the goods were then needed or not, and notwithstanding that said Glass Company had never filled said Flaccus contract until, at the time of the passage of the concurrent resolution by the two Houses of the General
23 Assembly of South Carolina in 1906 canceling the unfilled portions of existing contracts, there were outstanding contracts at exorbitant prices under which there remained to be filled orders for more than two hundred cars of glass bottles of the approximate value of more than $200,000; by which action on the part of the General Assembly, according to the testimony of one of the officers of said Glass Company, the State saved more than $50,000, when comparison is made with the prices paid for goods subsequently purchased.

Fifth. That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent below the prices at which the same goods were being sold to the State of South Carolina; the agent of said Carolina Glass Company admitting in his evidence before this Commission that the purchase of the Flaccus contract was made

for the purpose of getting rid of a competitor, and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina.

We therefore find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever; but the Commission further finds that it should de-

24 termine the matter on equitable principles and fix the matter of liability on a "quantum meruit" basis and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906 and 1907 at about ten per cent above the fair and reasonable market price for said goods. The Commission finds that the total amount of sales, after making all proper corrections therein, made by the Carolina Glass Company during the entire period of the transactions with the State Dispensary up to the time it was abolished, was $613,437. Of this amount the sum of $99,108 was for goods sold during the year 1906 and the short period during 1907 during which that Dispensary was conducted, so that the total sales made by the Carolina Glass Company during the years preceding the year 1906 aggregated $514,329.90.

The Commission finds that beginning early in the year 1906, as the result of a legislative investigation made by a committee appointed by the General Assembly of the State of South Carolina and the resolutions adopted by the General Assembly relating especially to the contracts with the Carolina Glass Company hereinbefore referred to, the Carolina Glass Company was forced to and did lower its bids to prices which during that year and the short period of 1907 during which the Dispensary was operated, were substantially in accord with the fair and reasonable market price of the goods sold during that period; but the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was $51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to-wit, its claim for $23,013.75, which, being deducted from the amount of said overcharges, the Commission

25 finds said Carolina Glass Company to be indebted to the State of South Carolina in the sum of $28,419.24.

Whereupon, judgment is rendered in accordance with the foregoing findings.

Signed this, November 17th, 1909.

W. J. MURRAY—No.
JOHN McSWEEN—No.
A. N. WOOD.
AVERY PATTON.
J. S. BRICE.

Within ten days from the filing of said judgment the claimant duly served and filed, in writing, its notice of appeal to the Supreme Court from said judgment.

Notice.

You will please take notice, that the Carolina Glass Company intends to appeal from the order, or judgment, of the State Dispensary Commission rendered upon its claim, above entitled, and dated the 17th day of November, and served on the said Carolina Glass Company, November 20, 1909, upon exceptions to be hereafter served with the case for appeal.

LYLES & LYLES,
Attorneys for Carolina Glass Company.

Columbia, S. C., November 24, 1909.

To Hon. W. J. Murray, Chairman; Hon. John McSween, Hon. A. N. Wood, Hon. Avery Patton, Hon. J. S. Brice, Constituting the State Dispensary Commission, and Hon. J. Fraser Lyon, Attorney General for the State of South Carolina.

26 Within thirty days from the service of said notice of appeal, the claimant duly served this case for appeal, with exceptions, as follows:

Exceptions.

Before the State Dispensary Commission.

STATE OF SOUTH CAROLINA,
County of Richland:

In the Matter of the Claim of CAROLINA GLASS COMPANY against STATE DISPENSARY COMMISSION.

You will please take notice, that for the purpose of appeal to the Supreme Court of the State of South Carolina from the judgment of the State Dispensary Commission, the claimant, Carolina Glass Company, excepts to the rulings of said Commission and the judgment on said claim, on the following grounds, to-wit:

1. Because, by section eleven of an Act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind Up Its Affairs," approved the 16th day of February, 1907, as amended by the Act approved the 24th day of February, A. D. 1908, entitled "An Act to Amend an Act Entitled 'An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind Up its Affairs,' so as to Provide Compensation for Members of the Said Commission for the Year 1908, and to Provide for the Sale of the Real Estate Heretofore Used in Conducting the Dispensary, and to Further Provide for
27 Winding Up the Affairs of the State Dispensary," the State Dispensary Commission are invested with judicial powers "to

pass upon, fix and determine all claims against the State growing out of dealings with the Dispensary," and, in contemplation of law, should have proceeded in a judicial manner to fairly and impartially decide between the State of South Carolina and such persons or corporations as might file claims against the State of South Carolina growing out of dealings with the State Dispensary; and the said claimant submits that the said State Dispensary Commission did not so proceed in considering claimant's claim, for the following reasons:

(*a*) Because said State Dispensary Commission entered into a contract with Messrs. Anderson, Felder, Rountree & Wilson, whereby said State Dispensary Commission agreed to pay to said attorneys a commission upon all amounts by which the amounts of claims filed before said Commission might be reduced, and also upon all amounts which might be recovered for the State of South Carolina, thereby in effect contracting to cooperate with the said attorneys and to be influenced by them in reducing the claims so filed and in finding judgments against claimants.

(*b*) Because the said State Dispensary Commission, in their deliberation upon the claim of the above-named claimant, allowed the said attorneys, Messrs. Anderson, Felder, Rountree & Wilson, to be present at their deliberations in executive session when no representative of claimant was present, and to take part in the same, and were thereby unduly and unfairly influenced against the claim of the above-named claimant.

(*c*) Because one of the said Commissioners, Mr. J. S. Brice, himself a new appointee upon said Commission, and not having heard any of the testimony theretofore adduced, upon the opening of the argument upon the claim, stated as follows, to-wit:

28 "Mr. Lyles, from my recollection and knowledge of the testimony, there is certainly a doubt in my mind whether the State of South Carolina owes the Carolina Glass Company a cent. I am under the impression, from the testimony, that it will show that the Glass Company really owes the State a large sum of money. I want to hear you on that point; in other words, that from the fall of 1902, when they commenced doing business down here, their overcharges down here, compared with what the State if doing an honest business, buying glass from other people, would amount to several hundred thousand, and instead of the State owing them some $18,000, they owe the State $100,000. In developing your case, develop that point—it was published in Collier's Weekly. I got the testimony and read it up on that point, and it is based on the testimony of competent witnesses from other houses. I read your cross-examination and could not see where you shook the testimony of the fellow who said his house would have furnished $240,000 cheaper," thereby showing that his own mind had been greatly prejudiced and that he had formed an opinion against the validity of claimant's claim from the reading of Collier's Weekly, a weekly periodical published in the City of New York, of a highly sensational character; the said Commissioner thereafter, notwithstanding such disqualification, participating in the meeting of said Commission and being one of the three Commissioners who united in the judgment of the

Commission sustaining an offset against claimant's claim which more than wiped out the same.

2. Because, upon the investigation in consideration of claimant's said claim, the said Commissioners considered a vast amount of so-called testimony which had been taken by the Investigating Committee of the General Assembly in the years 1905 and 1906, and said testimony was taken by said Committee only as an Investigating Committee and for an ex parte showing, and the above-named claimant had not had an opportunity properly to cross-examine the witnesses so examined or to offer testimony in answer thereto.

3. Because, upon said investigation, the said State Dispensary Commission considered the ex parte affidavit of Brevard D. M'ller, taken outside of the State of South Carolina, when the said claimant had had no opportunity to cross-examine him or to confront him.

4. Because, in considering the said claim, the said Commissioners considered the testimony of one George K. Packham, the testimony in its nature being such as not to be relevant to the issues in question, and the said claimant not having had an opportunity before said Investigating Committee to establish, by disinterested witnesses, not only the invalidity of the testimony of the said Packham in every particular, but that he himself was a person unworthy of belief.

5. Because said Commissioners considered any testimony to the effect that other glass houses might have sold glass bottles, etc., cheaper to the State Dispensary than did the claimant above named, for, under the law which had been especially enacted for the government of the State Dispensary, it was unlawful for the Commissioners thereof to entertain bids for glass or any other commodity, unless the same were submitted under the rules and regulations prescribed by law for the government of the said Dispensary, and the bids which had been from time to time submitted by the claimant above named were regular in all respects, and full compliance had been made with provisions of law in submitting the same.

6. Because the said Commissioners took into consideration the fact that the above-named claimant in the conduct of its business, selling about 97 per cent of its entire product to the State of South Carolina, did occasionally sell a small part of the remaining 3 per cent of its product to other parties at prices lower than the prices contracted for to the State Dispensary, and it was shown by overwhelming testimony that the part so sold practically consisted of remnants of molten or blown glass which were from time to time disposed of in this manner to avoid a complete loss of the product, as would have otherwise resulted.

7. Because the Commission found as follows, to-wit: "That the Carolina Glass Company was organized during the summer of 1902 in pursuance of an agreement which had been made between its promoters and certain members of the Board of Directors of the South Carolina State Dispensary whereby it was intended that the said Carolina Glass Company should manufacture such glass as the Board of Directors of the State Dispensary might agree to purchase, and that awards for the purchase of glass to be used by said State Dispensary

should be made exclusively to the Carolina Glass Company;" there being no evidence to sustain the same, said Commissioners having considered and such finding being based solely upon the ex parte affidavit of Brevard D. Miller, taken without the borders of the State without notice to the Carolina Glass Company, and in its nature inadmissible, and, moreover, contradicted by the absolute testimony of the witnesses Seibels, Thomas Taylor, Childs, Whaley and Norton, and the affidavits of every other member of the Board of Directors of the Carolina Glass Company, and by the overwhelming showing that no member of the Dispensary Board ever had any interest in the company.

8. Because the Commission found as follows, to-wit: "That said officers and promoters of the said Carolina Glass Company and said Board of Directors or some of them entered into a conspiracy to defraud the State of South Carolina by preventing and defeat-
31 ing all competition in the sale of glassware needed, used or purchased by the State Dispensary, and did in fact destroy all such competition;" the same being without any evidence tending to establish such conspiracy.

9. Because the said Commission found as follows, to-wit: "That in pursuance of this understanding and agreement the said Carolina Glass Company did (in September, 1902) to furnish fifty cars of glass bottles at prices ranging about ten per cent in excess of the prices that were then being paid by said State Dispensary to Flaccus & Company with whom the State Dispensary then had a contract, a large part of which was still unfilled; and notwithstanding this fact and the further fact that at the same time other bids were filed from other reputable houses at lower prices, said Board of Directors awarded the contract to said Carolina Glass Company at those prices;" the same being erroneous—

(*a*) In that there was no testimony that the bid made by the Carolina Glass Company in September, 1902, was made in pursuance of any understanding and agreement with the Board of Directors of the Dispensary.

(*b*) In that there was no testimony tending to show the fact that at the same time other bids were filed from other reputable houses at lower prices.

(*c*) In that it was not true that a large part of the Flaccus bid was still unfilled.

10. Because the said Commission found that "there was at the time the same was purchased twenty-two cars of glass still to be delivered under its terms;" when they should have found, from the records of the Board of Directors of the Dispensary themselves, that the said Flaccus contract had been more than filled as to the amount of glass contracted for, and should have found that the Board of Directors could not have accepted more glass thereunder without violating the law governing their actions.

32 11. Because the said Commission found, that in March, 1903, the bid of the Carolina Glass Company was accepted "notwithstanding the further fact that there were several bids made for the manufacture and delivery of glass under the terms and conditions imposed by the Board of Directors of the State Dispensary

for much lower prices and for goods of just as good quality;" which was error in that there was no evidence that other bids were made at lower prices.

12. Because the said Commission found, with reference to the bid of March, 1903, as follows, to-wit: "The said bid of the Carolina Glass Company being then the highest bid made for the furnishing of glass with the exception of a bid by Flaccus & Company which was a few cents higher than that of the Carolina Glass Company, and which the Commission finds was a dummy bid, not intended to be accepted, but made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary but would file this bid as a blind; said Flaccus & Company having no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary;" which was error.

(*a*) In that they found that said bid was the highest bid made for the furnishing of glass, with the exception of a bid by Flaccus & Company.

(*b*) In that they found that the said bid of Flaccus & Company was a dummy bid not intended to be accepted.

(*c*) In that they found that said bid of Flaccus & Company was made in pursuance of an understanding between said Flaccus & Company and the Carolina Glass Company that the former would not compete for business with the State Dispensary and filed this bid as a blind.

(*d*) In that they found that the said Flaccus & Company
33 had no moulds or other facilities at that time for manufacturing any of the glass required by the Board of Directors of the State Dispensary; when, as a matter of fact, the said Flaccus & Company had a well-equipped mould shop and had every facility for the making of moulds of any character and at any time, and there was no testimony to the contrary.

There was no testimony of any character offered to sustain said findings and they were merely unwarranted assumptions on the part of the said Commission.

13. Because the said Commission found as follows, to-wit: "That for several quarterly periods following that of March, 1903, bids were invited for glass to be furnished to the State Dispensary and other bidders filed bids besides the Carolina Glass Company, all of which were lower in price (though for goods equal in quality), than those proposed at the same time by the Carolina Glass Company;" which was error in that there was no evidence to show that other bids were filed besides those of the Carolina Glass Company which were lower in price.

14. Because the said Commission found as follows, to-wit: "And that some of said bids were suppressed by said Board of Directors, with the consent of the Carolina Glass Company so that no entry or record was made upon the books of said Board of Directors of the State Dispensary in regard thereto; that notwithstanding this, awards in each instance were made to the said Carolina Glass Company and purchases made from it at the higher prices named in

their bids;" which was error in that there was no testimony that any bids were ever suppressed by said Board of Directors or that the Carolina Glass Company ever consented thereto.

15. Because the said Commission found as follows, to-wit: "That after December 3, 1902, and until the early part of the year
34 1906, when pursuant to a concurrent resolution of the Senate and House of Representatives of the State of South Carolina, the existing contract between the State Dispensary and the Carolina Glass Company, as to unfilled portions thereof, were canceled, the said Carolina Glass Company, by and with the aid and assistance of the Board of Directors of said State Dispensary and in furtherance of the conspiracy already formed to destroy and prevent all competition in the sale of glass to said Dispensary, secured and maintained a complete monopoly of all the business in that commodity that was done with said State Dispensary;" which was error in that there was no testimony that there was any conspiracy on the part of the Carolina Glass Company and the Board of Directors of the State Dispensary, or any collision between them, to destroy and prevent competition in the sale of glass to the Dispensary or to secure and maintain a monopoly of the business in that commodity.

16. Because the said Commission found as follows, to-wit: "That after the year 1902, and during the remainder of the period above named, said Carolina Glass Company, secure in the monopoly then created, raised its prices from time to time and were awarded contracts therefor, by said Board of Directors, said prices being at all times much above the fair market prices for the goods sold;" which was error in finding that any monopoly had been created and that said prices were above the fair market prices for the goods sold, when said Commission should have recognized that glass, like any other commodity, varied in prices and that, as shown by the testimony, the cost of production, on account of the material used, and the constantly increasing prices of labor, steadily increased during the period named.

17. Because the said Commission found as follows, to-wit: "Said Board of Directors continuing at nearly every quarterly meeting to award new contracts to said Glass Company at those exorbi-
35 tant prices, * * * until * * * in 1906 * * * there were outstanding contracts at exorbitant prices;" which was error in that there was no testimony to show that the prices were exorbitant, and, as a matter of fact, they were not.

18. Because the said Commission found that by the action of the General Assembly in canceling the contract with the Carolina Glass Company, "according to the testimony of one of the officers of said Glass Company, the State saved more than $50,000, when comparison is made with the prices paid for goods subsequently purchased;" which was error in that it refers to a merely supposititious case, comparing the prices which had been fixed in the said contracts, with the price of the glass in a single transaction subsequently made when the company had the glass on hand and suitable for no other customer, with the name of the State blown in the bottles, which had to be sold at a sacrifice.

19. Because the said Commission found as follows, to wit: "That said Carolina Glass Company sold goods of the same quality and size and general character as that sold to the State Dispensary in other States and in other parts of the State of South Carolina at prices which, making allowances for all credits properly to be given to said Carolina Glass Company for the different conditions under which those sales were made, averaged in prices from twenty to twenty-five per cent below the prices at which the same goods were being sold to the State of South Carolina;" which was error in the conclusion that such fact was true, proper allowances being made for different conditions, etc., and that it showed that an improper price was being charged to the State of South Carolina, because it appeared in evidence that probably not over two per cent of the product of the company was sold to other parties at lower prices than *were sold* to the State of South Carolina, and then only because of that being the surplus product and in the nature of remnants.

36 20. Because the said Commission found as follows, to-wit: "The agent of said Carolina Glass Company admitting in his evidence before this Commission that the purchase of the Flaccus contract was made for the purpose of getting rid of a competitor and that wherever his company sold goods in competition with others they met that competition by selling the goods at lower prices than the same were sold to the State of South Carolina." Such findings being based upon a misapprehension of the testimony.

21. Because the said Commission concluded as follows, to-wit: "We therefore find that the contracts made between the Carolina Glass Company and the Board of Directors of the State Dispensary were contrary to the laws of the State and against public policy, and for those reasons null and void, and that the said Carolina Glass Company should not, as a matter of strict law, be entitled to recover any sum of money from the State of South Carolina on account of said contracts, even if the State had no offsets against them whatsoever."

22. Because the Commission found as follows, to-wit: "But the Commission further finds that it should determine the matter on equity principles and fix the matter of liability on a 'quantum meruit' basis and that the prices at which the Carolina Glass Company sold to the State Dispensary the glassware manufactured by it ranged throughout the entire period of their transactions with the State Dispensary, except for the years 1906 and 1907 at about ten per cent above the fair and reasonable market price for said goods;" which finding was erroneous in that it stated that, with the exception therein stated, the price charged the State of South Carolina ranged at about ten per cent above the fair and reasonable market prices for said goods, there being no evidence to support the same.

23. Because the Commission found as follows, to-wit: "But

37 the Commission finds that during the years preceding 1906 the overcharges made in excess of the fair and reasonable market price for the goods sold was $51,432.99, which should be and is hereby offset against the claim in favor of said Carolina Glass Company, to-wit, its claim for $23,013.75, which, being deducted from the amount of said overcharges, the Commission finds said

Carolina Glass Company to be indebted to the State of South Carolina in the sum of $28,419.24;" which was error.

(*a*) In that the Commission found that any overcharges were made in excess of fair and reasonable market prices for goods sold, or that said overcharges amounted to $51,432.99, which was without evidence.

(*b*) In that they concluded that such overcharges should be offset against the claim in favor of the said Carolina Glass Company.

(*c*) In that no question of the right of the State of South Carolina against said claimant on account of the transaction prior to 1906 by offset,—counterclaim or otherwise,—was before the said Commission by any notice or other pleading of any character.

(*d*) In that the said Commission, being a court whose jurisdiction was limited to the consideration of and passing upon claims made against the State of South Carolina on account of the State Dispensary, it had no power to consider the supposed claim of the State of South Carolina against the claimant on account of other thansactions which had occurred prior to the year 1906.

24. Because the said State Dispensary Commission was a commission of limited jurisdiction having no authority to pass upon claims of the State of South Carolina against other persons, and therefore had no jurisdiction to offset against the just and valid claim of the above-named claimant for the sum of $23,013.75
38 as found by said Commission, a supposed claim against the said claimant on account of previous and other transactions between the said claimant and the State of South Carolina.

25. Because the above-named claimant, having duly filed its claim against the State of South Carolina for the sum of $23,013.75 growing out of dealings with the Dispensary, the validity of that claim, and of that claim alone, was before the said State Dispensary Commission for consideration. There was no pleading or notice of any character apprising the said claimant that the State of South Carolina, or the said State Dispensary Commission, would undertake to offset against said valid claim another claim of the State of South Carolina, and this claimant has, by the judgment of said State Dispensary Commission, been deprived of its just rights without due process of law and without due and orderly consideration of the subject matter of said supposed offset.

26. Because the method of procedure of the said State Dispensary Commission in considering claimant's claim and in offsetting the same, when duly allowed and approved of by them, by a supposed claim of the State of South Carolina on account of previous and other transactions between the said claimant and the said State of South Carolina, was not only in violation of section 11 of the Act to Amend an Act entitled "An Act to Provide for the Disposition of all Property Connected with the State Dispensary, and to Wind Up its Affairs," but also was in violation — and in repugnance to Article 1, section 5, of the Constitution of the State of South Carolina, and to the 14th Amendment, section 1, of the Constitution of the United States, for the following reason:

In that, when no provision was made for the consideration of such

claim for the State of South Carolina against said claimant, and without any notice or pleading whatsoever, the said claimant having come into court only to present its claim against the State
39 of South Carolina, the said State Dispensary Commission, without pleading or notice, undertook to adjudge, and did adjudge, that the said claimant was indebted to the State of South Carolina in the sum of $51,432.99 arbitrarily fixing the same at ten per cent of the amount of sales which had been previously made by claimant to the State of South Carolina, and thus not only wiped out the just and equitable claim, as found by said Commission itself, of $23,-013.75, in favor of this claimant against the State of South Carolina, but rendered a so-called judgment against this claimant in favor of the said State of South Carolina in the sum of $28,419.24.

JOHN T. SEIBELS,
D. W. ROBINSON,
LYLES & LYLES,
Attorneys for Claimant.

To the State Dispensary Commission and Hon. J. Fraser Lyon, Attorney-General.

40 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1910.

CAROLINA GLASS COMPANY, Appellant,
vs.
STATE OF SOUTH CAROLINA, Respondent,

and

CAROLINA GLASS COMPANY, Plaintiff,
vs.
W. J. MURRAY et al., Defendants.

Opinion by D. E. Hydrick, A. J.

The above stated cases were heard and will be considered together, as the second grows in part out of the first. At the session of 1905, a committee of the legislature was appointed, under a concurrent resolution, to investigate the affairs of the State Dispensary, 24 Stat., 1220. The resolution was very broad in its scope, and authorized the committee, among other things, to investigate all transactions connected with the dispensary and its management, present and past, and the connection of any of its officers with any corporation, concern or individual, contracting for the sale of goods to the State for the dispensary, and ascertain the financial standing of the business.

The investigations of the committee resulted in an act, passed in 1907, authorizing the appointment of a commission, to be known as the State Dispensary Commission, whose duty it was to close out the entire business and property of the State Dispensary, collect

all debts due, and pay "all just liabilities" of the State growing out of said business. The Commission was given "full power and authority to investigate the past conduct of the affairs of the dispensary." It was also clothed with all the power and authority conferred upon the Committee, which had been appointed under the resolution above referred to. 25 Stat., 835. The act of 1907
41 was amended in 1908 so as to give the commission "full power to pass upon, fix and determine all claims against the State growing out of dealings with the dispensary; and to pay for the State any and all just claims which have been submitted to and determined by it, and no other." 25 Stat., 1289.

Appellant presented to the commission a claim for $23,013.75 as the balance due it by the State for bottles and demijohns furnished to the dispensary under contracts made with the board of directors from and including April, 1906, until the business was closed out by the commission. Appellant had also furnished the dispensary practically all the bottles and demijohns used since about December, 1902; but all accounts prior to April, 1906, had been settled.

Upon the filing of this claim, the Commission went into an investigation of all past dealings of appellant with the dispensary; and, after hearing a great deal of testimony and argument thereon, rendered its decision, dated Nov. 17, 1909, which will be set out in the report of the case.

The conclusion and finding of the Commission was that, in pursuance of a conspiracy between some of the directors of the dispensary and some of appellant's officers or agents to defraud the State, whereby legitimate competition was destroyed, appellant had a monopoly of the business of furnishing glass to the dispensary from the date of its beginning business, in 1902, until April, 1906; and that the prices paid it for glass during that period exceeded the fair market value thereof by $51,432.99. Therefore, allowing appellant's claim of $23,013.75, the commission found that appellant was indebted to the State in the sum of $28,419.24, the difference between the amount of its claim and the sum it had fraudulently collected from the State.

From that decision, this appeal was taken, under the provisions of the statute, "giving every claimant the right of appeal to the Supreme Court, as in cases at law." Appellant concedes that the jurisdiction of this court is limited in such cases to a review of alleged errors of law. Many of the exceptions question the findings
42 of fact on the ground that there is no testimony to support them. If that were so, they might be corrected as errors of law. But, after a very careful consideration of the testimony, we have failed to discover that any of the findings of fact are wholly unsupported by testimony. It would unnecessarily prolong this opinion to discuss in detail the evidence, which covers 650 printed pages, to point out that which tends to support the findings of the commission, which are material to its decision. It would be an unprofitable task. Besides, any expression of opinion by this court upon the sufficiency of the evidence upon any point might result in prejudice to others whose rights may be affected by the same testimony and *gacts*

inferable therefrom in other litigation which may grow out of the transactions in question. In this connection, it may not be out of place to say that we do not agree with appellant's counsel that the finding of the commission of a conspiracy to defraud the State is an impeachment of the character for honesty and integrity of every stockholder, director and officer of the company. Corporations, like individuals, are bound by the acts of their agents within the scope of their authority, even those fraudulently done; and while the legal consequence of such acts must be visited upon the principals, it by no means follows that the principals can justly be charged with guilty participation in them. It is but fair to say that there is not a particle of testimony tending to show that some of the stockholders, directors, and officers of the company had any knowledge of the transactions which fell under the condemnation of the commission.

The first exception alleging error of law is that after the testimony had been taken, and the argument was about to commence, one of the commissioners stated to appellant's attorney that, from his recollection and knowledge of the testimony, there was a doubt in his mind whether the State owed appellant anything; that he was under the impression, from the testimony, that it showed that appellant owed the State a large sum of money on account of overcharges; and asked that his argument be directed to that point. It is con-
43 tended that this statement showed that the mind of the commission was prejudiced against appellant's claim, and that he was thereby disqualified to participate in the deliberations of the commission. Such a contention is clearly untenable. The commissioner distinctly stated that the impression made upon his mind was from reading the testimony. Ordinarily, the mind of every intelligent man is impressed one way or the other as to the weight of evidence and its sufficiency to establish the facts in issue as he hears or reads it. There is no impropriety in the trier of facts stating to counsel the impressions so made upon his mind, that he may have the opportunity of so presenting the evidence as to remove the impression, if possible. It is common practice for judges to state to counsel the bent of their minds as to the law or facts, so as to direct argument to the questions involved, and we have never heard the practice questioned or condemned. On the contrary, it is a distinct advantage to counsel in arguing a case.

The next contention or appellant is that the commission is not a court, but a special tribunal of limited power, and that it exceeded its authority in undertaking to fix and determine appellant's liability to the state, and then set off its claim against the liability so fixed. It is conceded that the commission is not a court, though its duties necessarily involve, to some extent, the exercise of judicial functions, as is always the case where judgment and discretion are to be exercised. It was created under Section 2 of Article 17 of the constitution, which provides that "the general assembly may direct by law in what manner claims against the State may be established and adjusted." State vs. Dispensary Commission, 79 S. C., 316. Of a like nature was the "Court of Claims," created under a similar provision of the constitution of 1868. Ex parte Childs, 12 S. C., 111.

This being so, the Commission is limited to the exercise of such powers as are expressly conferred upon it by the statutes, and such as are necessar-y implied from those conferred. This is true even of courts of special and limited jurisdiction. McKensie v. Ram-
44 sey, 1 Bail., 460. It is contended that authority "to pass upon, fix and determine all claims against the State" does not include authority to fix and determine claims in favor of the State against others. Such a construction of the statutes is too narrow, and unwarranted from their manifest purpose and intent. The commission was authorized and directed to determine what were the "just claims" against the State growing out of the business, and to *do* that end it was directed to investigate all transactions with the dispensary past and present. For what purpose? Evidently to enable it to decide what were the just liabilities of the State. And how could it decide what was the just liabili*ties* of the State to a claimant without ascertaining what was the just liability of the claimant to the State growing out of his dealings with the dispensary? The determination of the one necessarily involved the other.

The question, therefore, whether the commission had authority to entertain a "set off" of a "counter claim" in favor of the State against a claimant, in the technical sense in which those terms are used in legal proceedings is not germane or material to the present inquiry. To what purpose should the commission investigate, unless it announced the result of its investigation? We see no error, therefore, in the Commission stating its findings as the result of its investigation.

The findings of the commission, however, are controlling only in its determination of the non-liability of the State upon appellant's claim. They have not the force or effect of a judgment, concluding appellant in any other proceeding—such, for instance, as the State might institute in the proper court to recover the amount found by the Commission to be due it by appellant.

The exceptions assigning error in admitting in evidence certain testimony which had been taken by the investigating committee, appointed under the resolution hereinbefore referred to, cannot be sustaind; because the record fails to show that objection was made to its introduction; on the contrary, it appears that it was introduced by consent. Besides, appellant was represented by counsel before
45 the committee and cross-examined the witnesses, except one, whose affidavit was admitted without objection; and after the testimony was admitted, the commission offered appellant opportunity to introduce testimony in rebuttal or to impeach the witnesses.

The next assignment of error is in admitting testimony to show that other manufacturers of glass had put in bids with the directors of the dispensary which were lower than the bids of appellant, which were accepted by the directors; and that appellant had, during the time it was furnishing the dispensary, sold bottles of the same kind to other buyers in smaller quantities at lower prices, because in dealing with the other buyers it had to meet competition, the contention being that appellant's bids having been accepted and contracts awarded upon them, such testimony was irrelevant. The testi-

mony was clearly relevant, because it tended to prove the charge of a conspiracy to defraud the State. If it be true, as contended, and as some of appellant's witnesses testified, that these smaller quantities were sold at lower prices merely to get rid of its remnants or surplus product, which was a very small per cent. of its output, that was a fact for consideration of the commission in determining the weight and sufficiency of the evidence, but it could not affect its relevancy.

We proceed next to dispose of the issues raised in the second case stated at the head of this opinion. These arise principally out of an act approved February 23rd, 1910, and what has been done by the defendants under the provisions of that act, which, it will be noted, was passed subsequent to the decision of the commission upon the claim of the plaintiff. The provisions of the first five sections of the act pertinent to this case are, in substance: That, in addition to the powers conferred by all previous acts, the dispensary commission shall have power to pass upon, fix and determine claims of the State against any person, firm or corporation heretofore doing busines- with the State dispensary, and settle and receipt therefor; that the findings of the commission under its provisions,
shall be final, and upon the finding by the commission that
46 any person, firm or corporation *in* indebted to the State, the dispensary auditor and officials having charge of the funds of any county dispensary which may be indebted to such person, firm or corporation, shall pay to the commission the amount so found to be due the State, or so much thereof as the funds in their hands due to such person, firm or corporation will pay, and the receipt of the commission shall be a sufficient voucher therefor; that the commission may, by its order, stop the paying out of any funds of any county dispensary by an officer having charge thereof. Section- 7 and 9 of the act are as follows:

SEC. 7. The State dispensary commission is hereby empowered to pass all orders and judgments and do any and all things necessary to carry out the purposes of this act; and all judgments rendered by them for any claim due the State shall be a lien on the property of the judgment debtor situated within this state, and a transcript of said judgment shall be filed in the office of the clerk of the Court of common please in each county where any property of such judgment debtor is situated.

SEC. 9. In all cases pending before the said State dispensary commission, upon any claim or claims against any person or persons or any corporation or corporations owning any real estate in any county in this State, the said commission shall file in the office of the Clerk of court in each county where such real estate is situated a notice of the pendency of such cases, and the said notice so filed shall be full notice to all persons whomsoever claiming any title to or lien upon such real estate acquired subsequent to the filing thereof, and the debt found by said commission to be due the State shall have priority over the claims of all creditors, except creditors secured by mortgage or judgment entered and recorded prior to the filing of such notice, and the said real estate, in the hands of any

person or persons whomsoever, shall be liable for the payment of such debt so found to be due the State.

Within a few days after the approval of the act, to wit, on February 26th, 1910, the commission, by its attorneys, filed in the office of the clerk of court for Richland county, in which county
47 plaintiff owns real estate, a notice, headed or entitled, "The State vs. Carolina Glass Co." and signed by the attorney-general and other counsel representing the State. The notice was as follows: "Notice is hereby given to all whom it may concern, that the above stated cause has been instituted, and is now pending before the State dispensary commission for the recovery against the Carolina Glass Co. of $29,000.00, the amount which has been found to be due from the said defendant to the State of South Carolina owing to overcharges made by the said defendant in selling goods to the State dispensary, and this notice is given in accordance with the terms of an act of the legislature passed in February, 1910, and duly approved by the Governor." About the same time, notice was served on the plaintiff, pursuant to the provisions of the act, that the commission would proceed to pass upon, fix and determine the claim of the State against the plaintiff on account of the overcharges growing out of its dealings with the dispensary. Notice was also served on the County dispensary board of Richland county, requiring that board to pay to the commission the amount due by said board to the plaintiff.

Another feature of the case grows out of an agreement alleged to have been made between the attorneys for the plaintiff and the attorney representing the State with regard to the payment for shipments of glass made by plaintiff to the county dispensaries after November 20, 1909. At the date of the decision of the Commission on plaintiff's claim, several of the county dispensaries were indebted to plaintiff for glass shipped prior to the decision, and plaintiff was under contract to make further shipments. But, fearing that payment of the amounts due it by the county dispensaries might be stopped by order of the commission, and being unwilling, in view of the possibility of such action, to make further shipments, without an agreement that payment therefor would not be withheld, the attorney representing the State in the matter of claims against the plaintiff and others for overcharges against the dispensary, agreed with plaintiff's attorney that payments for all shipments made after November 20th, would not be interferred with by the com-
48 mission. There seems to have been some misunderstanding between the attorneys as to what the agreement was, or as to whether there was any agreement, with regard to the amounts then due the plaintiff for shipments previously made. No steps, however, were taken by the commission or the State's attorneys to stop the payment of such debts, and plaintiff continued to collect them, as well as those accruing after November 20th.

Upon the filing and serving of the notices above mentioned, this action was commenced in the original jurisdiction of this court to enjoin the defendants from ordering the sums due to plaintiff by the county dispensaries withheld or paid over to the commission, on

the ground that the act of the commission in fixing and determining the liability of plaintiff to the State was an excess of authority conferred by the statutes, and, therefore, null and void, and on the ground that the notice requiring the county board to pay to the commission the amounts due by it to plaintiff, in so far as it affected shipments made subsequent to November 25th, was a violation of the agreement with plaintiff's attorneys. Plaintiff also asks that the commission be enjoined from asserting or claiming a lien upon its real estate in favor of the State by virtue of the notice filed with the clerk of court for Richland county, on the ground that the sections of the act giving the State such lien upon the judgment of the commission, or the right to acquire it by reason of such judgment are unconstitutional.

Under the provisions of the constitution (Art. 8, Sec. 11) and statutes (25 Stat., 463) the county dispensaries are conducted "under the authority and in the name of the State." Therefore, the officers in charge of them are agents of the State and the funds arising from the sale of liquors through them are the funds of the State, and the debts due for goods sold to them are the debts of the State. In exercising the powers conferred upon it by the legislature, the dispensary commission is also the agent and representative of the State, "subject to no interference, except that of the general assembly itself," and a suit brought against it is, in effect a suit against
49 the State. State v. Dispensary Commission, 79 S. C., 316, 329. As the State cannot be sued without its consent, no court has power to interfere with or direct the disposition of the State's funds in the hands of its agents, unless it appears that they are acting without authority of law, or are refusing to recognize and obey the law to the detriment of private rights. In State v. Dispensary Commission, supra, at page 325, this court said: "The general assembly may require the public funds, or any part of them, to be put in any place or with any person it sees fit; and there is no limit to its powers in imposing conditions and conferring discretion on its fiscal agent as to the disbursements of these funds to its creditors. When a discretion is conferred by the State, no court can supplant the agent of the State and substitute for his discretion its own judgment." In ordering the funds in the hands of the officers of the county dispensaries due to the plaintiff turned over to itself, the commission acted within the limits of the authority and discretion conferred upon it by the legislature, and this court has no power to interfere. From the foregoing, it will be seen that it is unnecessary to inquire or decide whether there was an agreement between the attorneys for plaintiff and the attorneys for the State, as to the collections of the amounts due plaintiff from the county dispensaries for shipments made prior to November 20th, or what the agreement was, or whether it has been violated. The dispensary commission is the sole arbitor of the rights of the plaintiff, if it has any, with regard to that matter.

The claim that the state has a lien upon the real estate of the plaintiff by virtue of the provisions of Section 7, and by virtue of the notice filed with the clerk of court under the provisions of sec-

tion 9 of the act of 1910, presents a serious and delicate question. Unless the provisions of Section 7 must be construed to be retroactive, the lien cannot be claimed under that section. The rule is too well settled to require discussion that a statute will not be construed so as to have retroactive effect, unless such construction is required by its express terms, or by a necessary implication. There are no words in the act expressly giving any of its provisions
50 retroactive effect, and there is no necessary implication from the language used that the legislature intended that it should have such effect. Therefore, when the legislature said, in section 7, that "all judgments rendered by them (the Commission) for any claim due the State shall be a lien on the property of the judgment debtor situated within this State," it meant all judgments rendered after the passage of the act, as the only judgment, in any sense of the word, rendered by the commission against the plaintiff was rendered before the passage of the act, no lien upon the property of the plaintiff was given or intended to be given by virtue of that judgment.

The constitution ordains (Art. 1, Sec. 14) that "the legislative executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." This language is as strong as it is simple and clear. The legislature therefore cannot assume to itself the exercise of judicial powers. Seegars v. Parrott, 54 S. C., 1. Nor can it confer "judicial powers," in the sense in which these words are used in the constitution, upon any other body that the courts mentioned and provided for in Section 1 of Ar. 5 of the constitution which provides that "the judicial powers of this State shall be vested in" the courts therein specifically mentioned and provided for. The few instances in which judicial power is vested elsewhere are provided for in the constitution itself, and with these few exceptions, the whold of the element of sovereignty known as judicial power was vested by the people in their courts, and no-e of it was left to be lodged elsewhere. In fact, every person exercising the functions of either of the other departments of the government are forbidden to assume or discharge those vested in the courts. We have already seen that the dispensary commission is not a court within the meaning of the judicial article of the constitution, but is a special tribunal created under the power of the legislature to investigate the financial affairs of the State, and that provision of the constitution which authorizes the legislature to direct by
51 law how claims against the State shall be established and adjusted.

It follows that any attempt to confer upon the commission judicial powers, except in so far as the exercise of such powers may be necessarily incident to the duty of investigating and ascertaining the truth with respect to the management of the dispensary, and the just liabilities of the State growing out of dealings with the dispensary, is violative of the constitution. The exercise of the judicial functions, or quasi judicial functions, is often necessary as an incident,

to the exercise of the powers conferred by the constitution upon the other co-ordinate branches of the government, as in all cases where the exercise of judgment and discretion are required. But this is not the judicial power vested in the courts. It would be difficult to give an exact definition of the words "judicial powers" as used in the constitution, which would be applicable to all cases which might arise, and we shall not attempt it. The lines of demarcation between the powers of the three departments of government are often shadowy and illusive; but in the main they are clear, well defined and well understood.

The constitution assumed the existence of an organized society, and when it vested the judicial power in the courts, it had reference to the judicial power then existing, and such as the people then understood to be vested in and exercised by the courts. There can be no doubt or difficulty therefore as to those powers, which, from the earliest periods in the history of our constitutional forms of government, have been exercised by the courts in the due and orderly interpretation and administration of the law. It has always and universally been deemed the prerogative of the courts to enforce and protect rights, prevent and redress wrongs, punish offenses against the public, and determine the rights, obligations and liabilities of persons arising out of their relations to and dealings with each other. It would not be contended for a moment that the legislature could, even upon the fullest, fairest and most deliberate investigation, after due notice, pass a valid act declaring that a par-
52 ticular individual is indebted to the State in a given amount, and by legislative fiat create a lien upon his property. Such an act would not only be an unwarranted usurpation of judicial power, but would also be an infringement of the constitution guaranty that no person shall be deprived of his property without due process of law or be denied the equal protection of the laws. If, then, the legislature itself could not pass such a judgment, it cannot confer upon a commission the power to do so. The creature cannot be greater that the creator. The investigation of the dealings between the plaintiff and the State, the hearing of evidence and argument upon the facts and the law applicable thereto, and the determination of the rights of the plaintiff and the State growing thereout are so clearly an exercise of judicial power that the bare statement of the proposition is sufficient without argument to illustrate its truth. It was held to be such by this court in State v. Dispensary Commission, supra, where, at page 333, the court said: Their (the Commission's) discretion is a judicial discretion, and their action, without respect to the validity of claims, judicial action." So long, therefore, as the action of the commission was confined to the investigation of all dealings, past and present, with the dispensary, and the determination of the just liabilities of the State growing out of them, it was, as we have seen, based upon constitutional authority, and was valid and binding. But we find no authority in the constitution for the legislature to provide by law how claims of the State against others shall be established or adjusted, except through the courts. We conclude, therefore, that in so far as the act of 1910 attempts to confer upon

the commission power to pass final judgment upon the claims of the state against the plaintiff, it is unconstitutional, null and void. And, as the lien which the act attempts to create is based upon the unauthorized act of the commission, it is likewise null and void.

The judgment of this court is that the decision of the Commission upon plaintiff's claim against the State be affirmed, and that the defendants be enjoined from asserting or claiming any lien upon plaintiff's property under or by virtue of the notice filed in
53 the office of Clerk of court for Richland county, and that said notice be cancelled of record.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

54 *Authentication of Record.*

Supreme Court, State of South Carolina, *ss.*

I, U. R. Brooks, clerk of said court, do hereby certify that the foregoing pages, numbered from one to 53, inclusive, are a true, full and complete transcript of the record and proceedings, in the case of Carolina Glass Company, Plaintiff, vs. The State of South Carolina, Defendant, and also of the opinion of the Court rendered therein, as the same now appears on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office in Columbia, South Carolina, this December 27th, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

55 Supreme Court of South Carolina.

No. 7724.

In the Matter of the Claim of

CAROLINA GLASS COMPANY
vs.
STATE OF SOUTH CAROLINA.

Assignment of Errors.

Now comes the Carolina Glass Company and files herewith its petition for a writ of error, and says that there are errors in the records and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignments:

First. That the Supreme Court of South Carolina erred in holding and deciding that the method of procedure of the State Dispensary Commission in considering claimant's claim and in offsetting the same, when duly allowed and approved by said Commission, by a supposed claim of the State of South Carolina, on account of previous and other distinct and separate transactions between the said claimant and the said State of South Carolina, was not in violation of Section one of the Fourteenth Amendment, and Section ten or Article I of the Constitution of the United States and did not deprive claimant of its property without due process of law and deny to claimant the equal protection of the laws and trial by a jury, and impair the obligation of claimant's contract with the said State, out of which said claim arose.

Second. That the Supreme Court of South Carolina erred
56 in holding that, when no provision was made for the consideration of any distinct and separate claims of the said State of South Carolina against claimant, in the proceedings filed and taken by claimant before said State Dispensary Commission pursuant to the Act of the General Assembly of South Carolina, approved February 24th, 1908, entitled—

"An Act to Amend an Act entitled—'An Act to provide for the disposition of all property Connected with the State Dispensary and to wind up its affairs,' so as to provide Compensation for the Year 1908, and to Provide for the Sale of the Real Estate Heretofore Used in Conducting the Dispensary and to Further Provide for Winding up the Affairs of the State Dispensary".

and when claimant had no notice in any way of any such claim or claims against claimant in favor of said State, by pleading or otherwise, and no opportunity to be heard thereon, claimant was not deprived of its property without due process of law and denied the equal protection of the law, and its contract rights impaired, in contravention of Section one of the Fourteenth Amendment, and Section ten of Article I of the Constitution of the United States, when the said Commission, having found claimant's claim to be legally and equitably due and owing it, undertook to adjudge that said claim was offset and wiped out by such other distinct and separate claim or claims of said State against claimant.

Third. Because the Supreme Court of South Carolina should have held and decided that the action of the State Dispensary Commission in offsetting and denying the claimant's claim was in violation of Section one of the Fourteenth Amendment and Section ten of Article I of the Constitution of the United States because of the Stat-
57 ute, pursuant to which claimant's claim was filed, gave said Commission no jurisdiction to pass upon or determine claims of the State against claimant and because claimant had no notice of any such claim of the State, by pleading or otherwise, and no opportunity to be heard or to present evidence or argument thereon and was denied its right to a trial by jury thereon.

4. Because the Supreme Court of South Carolina should have held that claimant was deprived of its contract rights and property

without due process of law and denied the equal protection of the laws by the action of the State Dispensary Board in receiving and considering evidence and argument, over claimant's objection, concerning other claims of the State of South Carolina, arising out of other distinct and separate dealings between claimant and said State, as set-offs to deny payment of claimant's claim, when claimant had no notice or opportunity to be heard on such other claims.

For which errors, the Carolina Glass Company prays that the said judgment of the Supreme Court of South Carolina, dated November 29 1910, be reversed and a judgment rendered in its favor and for costs.

LYLES & LYLES,
JOHN T. SEIBELS,
D. W. ROBINSON,
Attorneys for Carolina Glass Company.

Columbia, S. C. November 4th 1912.

57½ [Endorsed:] Supreme Court of South Carolina. In the matter of the claim of Carolina Glass Company against State of South Carolina. Assignment of Errors. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, Clerk.

58 Supreme Court of South Carolina.

No. 7724.

In the Matter of the Claim of

CAROLINA GLASS COMPANY
against
STATE OF SOUTH CAROLINA.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the Carolina Glass Company, Claimant, hereby prays a writ of error, from the said decision and judgment, to the Supreme Court of the United States, and an order fixing the amount of a bond for costs.

Assignment of errors herewith.

LYLES & LYLES,
JOHN T. SEIBELS,
D. W. ROBINSON,
Attorneys for Carolina Glass Company.

STATE OF SOUTH CAROLINA,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by the Carolina Glass Company to the State of South Carolina in the sum of two hundred and fifty dollars.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

Dated November 8, 1912.

58½ [Endorsed:] Supreme Court of South Carolina. In the matter of the Claim of Carolina Glass Company, against State of South Carolina. Petition for Writ of Error. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

59 STATE OF SOUTH CAROLINA,
Richland County:

CAROLINA GLASS COMPANY, Plaintiff in Error,
vs.
STATE OF SOUTH CAROLINA, Defendant in Error.

Bond.

Know all men by these presents, that we, the Carolina Glass Company as principal and John J. Seibels and B. F. Taylor as sureties, are held and firmly bound unto the State of South Carolina, in the sum of two hundred and fifty (250.00) dollars, to be paid to the said State, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals, and dated this thirtieth day of October, 1912.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of South Carolina.

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be
60 adjudged if it shall fail to make good its plea, then this obligation will be void, otherwise to remain in full force and effect.

CAROLINA GLASS COMPANY,
By JOHN J. SEIBELS, *Its President.*
JOHN J. SEIBELS.
B. F. TAYLOR.

STATE OF SOUTH CAROLINA,
Richland County, ss:

John J. Seibels and B. F. Taylor, being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of South Carolina, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Two Hundred and Fifty (250.00) Dollars over and above all debts, liabilities and exemptions.

JOHN J. SEIBELS.
B. F. TAYLOR.

Sworn to and subscribed before me this October 30th, 1912.

CHAS. B. ROBB,
Notary Public for South Carolina.

Bond Approved.
Dated November 8, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

A true copy.
Attest:

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Sup. C't S. C.

60½ [Endorsed:] State of South Carolina, Richland County. Carolina Glass Company, Plaintiff in Error, against State of South Carolina, Defendant in Error. Bond. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

UNTED STATES OF AMERICA, *ss:*

[Seal United States District Court, Eastern Dist. S. C.]

61 *Writ of Error.*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Carolina Glass Company and the State of South Carolina, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity

of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Carolina Glass Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that
62 then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 4 day of November, in the year of our Lord one thousand nine hundred and twelve.

[Seal United States District Court, Eastern District So. Ca.]

RICHARD W. HUTSON,
Clerk District Court United States,
District of South Carolina.

Allowed
November 8, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

62½ [Endorsed:] Supreme Court of the United States. In the Matter of the claim of Carolina Glass Company, Plaintiff in Error, against State of South Carolina, Defendant in Error. Writ of Error. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

63 *Certificate of Lodgment.*

SUPREME COURT,
State of South Carolina, ss:

I, U. R. Brooks, clerk of said court, do hereby certify that there was lodged with me as such clerk on November 14, 1912, in the matter of Carolina Glass Company versus State of South Carolina:

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error, as herein set forth—one for *each* defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Columbia, South Carolina, this December 27th, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

64 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of South Carolina, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of South Carolina, wherein the Carolina Glass Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of South Carolina, the 8 day of November, 1912.

EUGENE B. GARY,
Chief Justice Supreme Court of South Carolina.

Attest:

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Service acknowledged this 15th day of November, 1912.

J. FRASER LYON,
Attorney General,
Attorney of Record for State of South Carolina.

64½ [Endorsed:] Supreme Court of the United States. In the matter of the claim of Carolina Glass Company, Plaintiff in error, against State of South Carolina, Defendant in error. Citation. Lyles & Lyles, Attorneys for Carolina Glass Co. Supreme Court of S. C. Filed Nov. 14, 1912. U. R. Brooks, clerk.

65 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of South Carolina, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of South Carolina, in the City of Columbia, this December 27, 1912.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Supreme Court of South Carolina.

Statement of Costs.

Plaintiff's costs.....$521.00 paid by Carolina Glass Co.
Defendant's costs..... $25.00 paid by Carolina Glass Co.
Cost of transcript..... $17.50 paid by Carolina Glass Co.

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 23,476. South Carolina Supreme Court. Term No. 408. The Carolina Glass Company, plaintiff in error, vs. The State of South Carolina. Filed December 30, 1912. File No. 23,476.